SUPREME COURT, U. S.

FEB 26 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1967

No. 517

PHIL A. ST. AMANT

Petitioner

versus

HERMAN A. THOMPSON

Respondent

APPENDIX TO BRIEFS

APPEAL FROM SUPREME COURT OF LOUISIANA

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IN RE:

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 517

PHIL A. ST. AMANT

VERSUS

HERMAN A. THOMPSON

DESIGNATION OF THE RECORD
IN THE FORM OF AN APPENDIX

Now into Court, through undersigned counsel, comes Phil A. St. Amant, petitioner, and designates the following to be included in the preparation of the record in the form of an appendix:

1. The original petition filed July 3, 1962.

2. Answer filed July 11, 1962.

3. Testimony of the following witnesses on direct and cross-examination:

   a. Phil A. St. Amant

   b. Bryan Clemmons

   c. Herman A. Thompson

d. Marjorie Ann Smith

4. Reasons for judgment of the District Court filed May 8, 1964.

5. Judgment of the District Court filed May 13, 1964.

6. Motion for a new trial filed May 18, 1964.

7. Reasons for judgment filed January 22, 1965.

8. Judgment filed January 27, 1965.

9. Opinion and judgment of the Court of the First Circuit, State of Louisiana, filed February 28, 1966.

10. Judgment of the Supreme Court of the State of Louisiana filed February 20, 1967.

Mover further informs the Court that the designation herein listed and the record necessary for the preparation of the appendix has this day been forwarded to A.B. Letter Service, Inc., 327 Chartres Street, New Orleans, Louisiana for printing in accordance with the rules of this Court.

Petitioner further informs the Court that while counsel for respondent Herman A. Thompson has not signed this instrument, he will not designate any additional portions of the record to be included in the appendix.

Respectfully submitted,

Moses C. Scharff
Whitney Bank Building
New Orleans, Louisiana

s/Russell J. Schonekas
Russell J. Schonekas,
Of Counsel

C E R T I F I C A T E

I hereby certify that a copy of the foregoing designation has this day been forwarded to Robert L. Kleinpeter, attorney for Herman A. Thompson, by depositing the same in the United States mail, postage prepaid.

New Orleans, Louisiana, this 24th day of January, 1968.

s/Russell J. Schonekas
Russell J. Schonekas

HERMAN A. THOMPSON	*	NUMBER 88779 DIVISION_____
vs.	*	19TH JUDICIAL DISTRICT COURT
PHIL A. ST. AMANT	*	PARISH OF EAST BATON ROUGE
	*	STATE OF LOUISIANA

PETITION FOR DAMAGES

The petition of Herman A. Thompson, a resident of lawful age of the Parish of East Baton Rouge, State of Louisiana, with respect represents:

1.

That Phil A. St. Amant, a resident of lawful age of the Parish of East Baton Rouge, State of Louisiana, is justly and truly indebted unto your petitioner in the full and true sum of One Hundred Fifty Thousand and No/100 ($150,000.00) Dollars together with interest thereon at the legal rate from date of judicial demand until paid and for all costs of court, for the following, to-wit:

2.

That your petitioner is a duly qualified Deputy Sheriff for the Parish of East Baton Rouge, State of Louisiana, with the rank of Captain, presently in charge of the Uniform Division for the East Baton Rouge Parish Sheriff's Office, and was so employed for many years prior to June 27, 1962.

3.

Your petitioner now shows that he has been informed and therefore alleges upon information and belief that on and prior to June 27, 1962, the defendant, Phil A. St. Amant, was a duly qualified candidate for the position of United States Senator for the State of Louisiana and was so engaged in his political campaign on and before and subsequent to June 27, 1962.

4.

Your petitioner now shows that he has been informed and therefore alleges upon information and belief that the defendant, Phil A. St. Amant, did appear on a television program on June 27, 1962, at approximately 8:30 p.m. o'clock over WAFB-TV, Channel 9, situated in Baton Rouge, Louisiana.

5.

Your petitioner now shows that on June 27, 1962, while the said defendant, Phil A.St. Amant, was appearing on the television program hereinabove referred to in Baton Rouge, Louisiana, the said defendant did make false, slanderous, libelous, scurrilous and malicious remarks concerning your petitioner and did cause the same to be reduced to writing and be distributed among the various members of the press and other news media in the Parish of East Baton Rouge, Louisiana.

6.

Your petitioner specifically shows that the said defendant, Phil A. St. Amant, did commence his television address with words to the following effect:

> "I have a story to reveal tonight which is so unusual that I have bought this time on the television to inform the public. This story involves a well-documented criminal, an ex-convict who became a labor chieftain. It involves misuse and theft of union funds, dealings with Communist officials of Cuba, a criminal conspiracy to destroy evidence and the destruction of that evidence; death resulting from the commission of a felony and a second death by a hit and run by a union car."

7.

Your petitioner further shows that the said defendant, acting individually, jointly, and in conjunction with one J. D. Albin, did make the above referred to remarks as well as the following remarks which were contained in the same television broadcast and subsequent printed release prepared by the said defendant, more particularly as follows:

> "we knew something had to be done if we were to ever straighten out the local union, and the onliest way to straighten it out was the removal of E.G.Partin. Now, we knew that

this safe was gonna be removed that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson.... from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police Office through that, and it was out of the jurisdiction of the City Police."

8.

That your petitioner attaches hereto and makes a part hereof as fully as though copied herein in extenso the entire printed material prepared and distributed by the said defendant, Phil A. St. Amant, in conjunction with and jointly with the said J. D. Albin.

9.

That all of the said remarks were intended to belittle, degrade and ridicule your petitioner and clearly reflects a design and intent on the part of the said defendant to defame, slander and libel your petitioner's good name, reputation and character before his friends, the Courts, and the Public in general.

10.

That a reading of the remarks and printed matter published by the said defendant, Phil A. St. Amant, imputes on the part of your petitioner gross misconduct and infers conduct of the most nefarious nature, all of which is false, untrue and defamatory particularly to your petitioner who is a regular, full-time employee as a Deputy Sheriff of the Parish of East Baton Rouge, Louisiana, having served many years in such capacity.

11.

That all of said remarks and publications are false, unwarranted and libelous and that as a result of the same, your petitioner has been damaged as follows:

(A) Humiliation and mental suffering-------- $50,000.00

(B) Injury to his personal and private reputation---------- 50,000.00

(C) Loss of public confidence and injury to his public and professional reputation 50,000.00

TOTAL---------- $150,000.00

WHEREFORE, your petitioner prays that the defendant be duly served with a certified copy of this petition and cited to appear and answer the same, and that after all legal proceedings have been had and all legal delays have expired, that there be judgment herein in favor of your petitioner and against the defendant in the full and true sum of One Hundred Fifty Thousand and No/100 ($150,000.00) Dollars, together with interest thereon at the legal rate from date of judicial demand until paid, and for all costs of court.

Petitioner further prays for all orders necessary and proper in the premises and for general and equitable relief.

By Attorneys,

KANTROW, SPAHT & KLEINPETER

BY: s/ Robert L. Kleinpeter
Robert L. Kleinpeter
P.O. Box 2828
Baton Rouge, Louisiana

FILED: JUL 3- 1962

INFORMATION FOR SERVICE OF PROCESS:

Serve the defendant, Phil A. St.Amant, at 2987 Government Street or 1516 Stuart Avenue, Baton Rouge, Louisiana

...oOo...

ANSWER OF DEFENDANT

(Number and title omitted)

TO THE HONORABLE, THE JUDGES OF THE 19TH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

Now comes Phil A.St. Amant, through undersigned Counsel, who for answer to Plaintiff's Petition denies each and every allegation contained therein except such as may be specifically admitted herein.

1.

Phil A. St. Amant admits that he is a resident of lawful age of the Parish of East Baton Rouge, Louisiana, but denies all the remaining allegations contained in Paragraph 1 of Plaintiff's Petition, and he especially denies that he is indebted unto the Plaintiff for any amount of money whatsoever.

2.

The defendant admits that Herman A. Thompson is a Deputy Sheriff, with the rank of Captain, presently in charge of the Uniform Division for the Parish of East Baton Rouge, State of Louisiana, and that he was so employed prior to June 27, 1962, and that he is still so employed but denies all the remaining allegations contained in Paragraph 2 of Plaintiff's Petition.

3.

Phil A.St.Amant admits that on and prior to June 27, 1962, he was a duly qualified Candidate for the position of United States Senator for the State of Louisiana, and that he was so engaged in his political campaign on and before and subsequent to June 27, 1962.

4.

The defendant admits that he appeared on a television program on June 27, 1962, at approximately 8:30 P.M. o'clock over WAFB-TV, Channel 9, situated in Baton Rouge, Louisiana.

5.

Phil A. St. Amant denies that he made false, slanderous, libelous, scurrilous or malicious remarks on the above stated Television Program and he otherwise denies the allegations contained in Paragraph 5 of Plaintiff's Petition in their entirety.

6.

The defendant admits that the introductory remarks of his television address contained the words hereinafter quoted in this Paragraph, but defendant states that these words were not uttered in any way or manner whatsoever in the same context as the words hereinafter quoted in Paragraph 7.

"I have a story to reveal tonight which is so unusual that I have bought this time on the television to inform the public. This story involves a well-documented criminal an ex-convict who became a labor chieftain. It involves misuse and theft of union funds, dealings with Communist officials of Cuba, a criminal conspiracy to destroy evidence and the destruction of that evidence; death resulting from the commission of a felony and a second death by a hit and run by a union car."

The words above quoted in this Paragraph treated of individuals other than the Plaintiff and they did not treat of Plaintiff in any manner or way. At no time and in no manner was any utterance made that could fairly be interpreted to mean or that would suggest or connote that the Plaintiff committed any of the acts stated in the above quoted words. The defendant therefore denies the allegations contained in Paragraph 6 of Plaintiff's Petition.

7.

Phil A. St. Amant admits that he made the remarks hereinafter quoted in this Paragraph, but the defendant states that they were not uttered in any way or manner as to be in the same context as the words hereinabove quoted in Paragraph 6.

"We knew something had to be done if we were to ever straighten out the local union, and the onliest way to straighten it out was the removal of E.G. Partin. Now, we knew that this safe was gonna be removed that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson...from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office of the State Police Office through that, and it was out of the jurisdiction of the City Police."

None of the defendant's utterances, wherever made, nor the words above quoted in this Paragraph can be fairly interpreted to mean, suggest or connote that the Plaintiff committed any of the acts mentioned in the words quoted herein above in Paragraph 6. The defendant therefore denies the allegations contained in Paragraph 7 of Plaintiff's Petition.

8.

The defendant admits that the document attached and pleaded in

Paragraph 8 of Plaintiff's Petition is printed material prepared and distributed by the defendant, but the defendant denies the remaining allegations contained in Paragraph 8 of Plaintiff's Petition.

9.

Phil A. St. Amant denies that he intended to belittle, degrade or ridicule the Plaintiff and the defendant denies that he had any intention or design to defame, slander or libel the Petitioner in any way. Further answering Paragraph 9 of Plaintiff's Petition the defendant states that he did not commit any act which belittled, degraded, ridiculed, defamed, slandered or libeled the Plaintiff in any way.

10.

The defendant admits that the Plaintiff is still a full-time employee as a Deputy Sheriff of the Parish of East Baton Rouge, Louisiana, and that he may have served in that capacity for many years, but the defendant denies that any of his remarks or printed matter distributed by him are false or not true and he further denies all the remaining allegations contained in Paragraph 10 of Plaintiff's Petition.

11.

Phil A. St. Amant denies that any of his remarks are false or unwarranted or libelous and he therefore denies the allegations contained in Paragraph 11 of

Plaintiff's Petition in their entirety.

Further answering the Plaintiff's petition, the defendant, Phil A. St. Amant, states that if this honorable Court should find that any word or words written or spoken, distributed, disseminated or broadcast by him or by any other person for whom he may be responsible is slanderous or libelous or in any way defamatory, he then pleads in the alternative and only in the alternative that

12.

Any such words were not written or spoken for any vindictive or selfish interest, but were uttered because they were true and their distribution, dissemination or broadcast was for the public good.

13.

Further pleading in the alternative the defendant states that the truth is an absolute defense to all of the allegations made by the Plaintiff and that Plaintiff's suit should be dismissed at Plaintiff's cost.

14.

The defendant states that the issues drawn by the Plaintiff's Petition and the defendant's answer herein present matters of grave public concern.In the public interest these issues should be resolved without delay. The defendant therefore respectfully represented to

this honorable Court that it should invoke Section 7 of the General Rules of this Court; that justice requires that a Special Session of this Court be held as is provided in Article 193 of the Louisiana Code of Civil Procedure, that just as soon as timely notice to the Plaintiff will admit the trial of this suit should be held at said special session.

WHEREFORE, Defendant, Phil A. St. Amant, prays

1. That this honorable Court call a Special Session to try and determine the issues presented herein with least practicable delay, and

2. That these answers be deemed good and sufficient and that Plaintiff's suit be dismissed at Petitioner's cost.

3. Defendant further prays for all orders necessary and proper in the premises and for general and equitable relief.

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Before me the undersigned authority personally appeared Phil A. St. Amant, who stated that he is the defendant named in this suit; that he has read the above and foregoing answer and that it is true and correct to the best of his knowledge and belief SO

HELP HIM GOD.

s/ Phil A.St.Amant
PHIL A.ST.AMANT

SUBSCRIBED AND SWORN TO
BEFORE ME AT BATON ROUGE,
LOUISIANA, THIS 10th
DAY OF JULY, 1962.

s/ Golden Mills
GOLDEN MILLS, NOTARY PUBLIC

(FILED: JUL 11, 1962)

...o0o...

TRANSCRIPT OF PROCEEDINGS

(Number and title omitted)

HEARD ON THE MERITS
MAY 5, 1964

...

HONORABLE FRED A. BLANCHE, JR.
JUDGE PRESIDING

...

APPEARANCES:

ROBERT L. KLEINPETER, ESQ. of the
firm, Kantrow, Spaht & Kleinpeter
FOR PLAINTIFF

R.G. VAN BUSKIRK, ESQ.
FOR DEFENDANT

TUESDAY, MAY 5, 1964

The trial of this case was begun:

MR. KLEINPETER:

At this time, Your Honor, before we start, I would like to have a separation of the witnesses and would like to have all the witnesses instructed not to discuss the testimony with anybody except counsel.

THE COURT:

Instruct them in that fashion.

(At this time the witnesses were sequestered from the courtroom.)

THE COURT:

The only one you are permitted to discuss the case with is your counsel, and you are not to discuss each other's testimony. You attorneys make sure that they are all out. (The attorneys comply.)

All right. Let's proceed.

MR. KLEINPETER:

May It Please the Court, I would like to call Mr. St. Amant on cross-examination.

(4) PHIL A. ST. AMANT,

the defendant, called for cross-examination by the plaintiff, being first duly sworn, testified as follows:

GROSS-EXAMINATION

BY MR. KLEINPETER:

Q State your full name, please, sir.

A Philemon A. St. Amant.

Q What does the "A" stand for?

A "A" stands for Andrews, my mother's maiden name.

Q Where do you reside, sir?

A At 1516 Stuart Avenue in Baton Rouge.

Q Are you a married man, sir?

A I am.

Q Do you have children?

A Four.

Q Do you own your home there, sir?

A I am renting from a brother. I own a piece of property that is known in the family as the home place on which I will build when certain financial arrangements are taken care of.

Q Where is that located, sir?

A The home place?

Q Yes.

(5) A In East Baton Rouge Parish.

Q Mr. St. Amant, are you employed, sir?

A I am self-employed.

Q What type of employment is that, sir?

A I have a franchise from a national accounting and tax concern.

Q Do you have a business--

A I own my own business.

Q Do you have a business office?

A I have a business office.

Q And what is the address of your business office?

A 218-C, White Star Building, which is 2987 Government Street.

Q From whom do you rent, sir?

A I rent from the White Star Company, Richard McDowell.

Q Mr. St. Amant, how old are you sir?

A I am forty-six.

Q And how long have you resided in the Parish of East Baton Rouge?

A Oh, it has been my permanent residence since about 1920 or 1921. My family was here before me. I was temporarily or my family was temporarily away in a professorial position at the time that I was born, but actually

we come from East Baton Rouge Parish for generations.

(6) Q Are you retired from the service, sir?

A Yes, I am.

Q What is your rank?

A Lieutenant Colonel, Retired.

Q In what branch of the service?

A Artillery, United States Army.

Q How many years of service did you retire with?

A Twenty years plus.

Q Now, Mr. St. Amant, in 1962 did you qualify as a candidate for the United States Senate?

A I did.

Q Who were your opponents in that particular Senatorial race, sir?

A There was only one, the incumbent Senator Russell B. Long.

Q Now, in that connection, sir, did you make certain speeches and political addresses in the Parish of East Baton Rouge and elsewhere?

A I did.

Q Do you recall, sir, appearing on WAFB-TV, Channel Nine, here in Baton Rouge on or about June 27, 1962?

A I did.

Q Attached to the petition that we filed was a "Transcript of the Phil A.St. Amant (Candidate for U. S. Senate) Ed Partin Telecast" for Wednesday, (7) June 27, 1962, which I have marked as P-1, and in the answer you have admitted that this is a transcript of the speech you made, is that correct, sir?

A (The witness examines the transcript.) I believe that it is. I would have to read it all the way through and compare it with the transcript I have to know whether this is it, but I believe it is. It was done rather roughly in my headquarters.

MR. KLEINPETER:

If the Court would permit, I would like to give him time to look at it so we can identify it.

A This is quite a long thirty-minute broadcast. Should I read it all or are you interested in any particular parts?

Q I would like to know if the whole thing represents your speech, sir, and if it takes reading to identify it, I would want you to do it, because I wouldn't want anything if it

didn't represent what you have said---

MR. KLEINPETER:

We might take a (8) little break and let him look at it, Judge.

THE COURT:

Well, can't we go on and have him verify that at some time during the course of the trial---

MR. KLEINPETER:

If he has a copy of his own that he knows---

A I have a copy in a slightly different form. This is one with the parts I think you are interested in, marked, which was used as an affidavit, and this is in fact the affidavit, and this is the one from which the broadcast was made.

MR. KLEINPETER:

Judge, I would prefer---

A This is a copy of the same thing. I can read it through. I would like to be careful, of course, before I acknowledge this.

THE COURT:

Well, I am going to let you do that when the court is at recess.

MR. KLEINPETER:

Judge, to get (9) into certain things, I mean I have to have him--of course, they have admitted in their answer that this is a copy of the speech that he made, and I think I could offer it without that, but in fairness to Mr. St. Amant, I would let him check it to see if it was the one. If not, I will go on and offer it on their admissions and let him check it later.

THE COURT:

Well, I would rather offer it on their admissions and then let him check it during the time when we have a recess and continue on with the trial and ask him specific questions about it which I am sure you will do, and if there is any variance between what you ask him out of that copy that they have in the petition and the one he has, then we will see.

MR. KLEINPETER:

In connection with the admissions contained in Paragraph Eight of the answer to the plaintiff's petition, I offer the exhibit marked P-1 which is attached (10) to plaintiff's original petition and is in the record.

Q Now, Mr. St. Amant, did you appear at WAFB-TV and make this oral speech from printed matter or did you make, as we call, an off-the-cuff speech?

A This talk was made in two versions. In the first place, a film was made for the presentation over the station, and at the time the film was made, it was made from this handwritten document of mine. If you will notice, I have my introductory talk and then I come to questions and the replies by the witness were ad-libbed by him. They were not prompted nor did I in all cases know the exact way he was going to present it. I had certainly discussed the material and had checked out its veracity before we ever presented it. Now, when this film was made as a thirty-minute film and it was returned, the question came up as to whether certain people, and certainly it never occurred to anyone that Herman Thompson would have anything to do with it because he was so collateral (I didn't even know the man, I never saw him until just now), but the question came up as to whether it would be wise on the part of the station to have both of us speaking the parts, so upon their (11) suggestion, going from the stenographic transcript of what was said, which is here, and is signed as an affidavit, I then read word for word this presentation for the one that was presented on the air in which I spoke both parts. The only changes in here was when I stated in between: "Ladies and gentlemen, I am reading from an affidavit. I will continue:" Then I would continue and in about three-quarters of the way through I broke in again and I said; "I am reading from an affidavit" or words to that effect. Other than

that, it was read from this very copy (indicating).

Q Now, Mr. St. Amant, the person you refer to as answering certain questions and the affidavit that was given, was that Mr. J. D.Albin?

A It was.

Q And it was upon the information furnished you by him that you made these remarks, is that correct?

A I did not make the remarks. Mr. Albin made the remarks. The introductory remarks I made, which, of course, have nothing to do with the Deputy Sheriff here.

Q On the television--

A It was on the information received from him and others.

(12) BY THE COURT:

Q May I interrupt? You are telling me that in the film presentation that was exhibited to the public, that you made certain statements and that in this presentation Mr. Albin was to make certain statements but that you made the statements, rather than Mr. Albin making them or being present there, you quoted what Mr. Albin had to say about it, is that a fair ---

A No, sir. Your Honor, there is a film

which we have here in the Court which was made with my asking questions of Mr. Albin and his replying to them, his replies being ad-lib. This film was to be presented on the air that night. It was, in fact, presented to a press conference in the Capitol House that evening, but on the station's request this particular film was not shown on the air. Instead, reading from a stenographic transcript right off the sound tract I presented both voices---St. Amant, the question: now then, the reply. I read them in my voice.

THE COURT:

I have it.

A So there are actually two versions. They both say the same. The wording is the same. In one case I speak both parts and explain that I am reading from (13) this affidavit which is signed as such.

THE COURT:

All right.

BY MR. KLEINPETER:

Q Now, Mr. St.Amant, either prior to making your television appearance or the telecast on June 27, 1962, did you prepare a transcript or either afterwards, before or afterwards, did you prepare a transcript of your appearance and your speech and circulate

this as evidence by document P-1?

A There was one prepared, yes. It was done stenographically from the sound track, and in making an opinion off the cuff, I believe this is it. He has asked me to identify it and if I look it over---

THE COURT:

I am going to give you a chance to look it over.

A But I believe that this is the one.

MR. KLEINPETER:

It is not necessary at this time, Judge.

A I believe that this is the one we presented. It was (14) very roughly done. It was reproduced in a hurry and I went through it and I changed a word on it here (indicating). The word was wrong and the correct word was "forgery" and it has been initialed by somebody down at the headquarters.

Q Now, sir, was this reprinted with your permission and at your direction, sir?

A It was.

Q Was it circulated to the members of the press and the radio at your direction?

A It was.

MR. KLEINPETER:

Judge, at this time I have a tape recording of the speech he made which has been returned to the Court in compliance with a subpoena duces tecum, and I would like to play it for the purpose of identification and for the purpose of offering it.

THE COURT:

All right.

A May I ask which version this is that you have?

Q You can identify it.

A I am sure I will know when it is done. I just thought---

(15) Q Mr. St. Amant, I am going to play a recording or what is allegedly a recording of a speech you made in return to the Court in compliance with a subpoena duces tecum issued to WAFB Television Station, and I want you to listen to it, sir, and tell me at the end, I will ask you certain questions, whether or not it is an original speech or a different speech or what.

(At this time the recording was played as follows:)

Fellow Americans, this is Paul A.St. Amant, your conservative candidate for

the United States Senate in the July 28th primary. I have a story to reveal tonight which is so unusual that I have bought this time on the television to inform the public. This story involves a well-documented criminal, an ex-convict who became a labor chieftain. It involves misuse and theft of union funds, dealings with Communist officials of Cuba, a criminal conspiracy to destroy evidence and the destruction of that evidence, death resulting from the commission of a felony and a second death by a hit and run with a union car. Neither death has been prosecuted. It includes abuse by this labor chieftain of the (16) members of his union, to include brutal beating, forgery, a shooting of the labor chief, the struggle of working men to properly use the provisions of the law to protect themselves, and their being thwarted by intervention of your junior United States Senator with no less then Jimmy Hoffa in order to protect his position-- to give a good character and reputation for this criminal local chief, in order to protect his position while he continues to ride roughshod over American working men, and finally, just before justice can be done, a key witness who had given Grand Jury testimony died by a most unlikely accident. Ladies and gentlemen, this is not my story, this is the story of working men, who in their struggle for freedom from tyranny sought me out when they saw no other way to turn. This is the story of the little man against oppression and political influence. This is the story of politics in Louisiana today. I

give you the American working man.

Ladies and gentlemen, I would like to tell you that at this time we have had to refilm this part because as filmed originally Mr. J.D.Albin appeared on the screen live and told his story (17) in answer to the questions that I gave him. However, because of legal advice to the station and checking with the F. C. C. of their legal responsibility, at this time it was determined that the original film would not be used on this program. Instead, I will read to you the signed affidavit of Mr. J. D.Albin as the testimony exactly as given. I want you to know then that the original film has been shown to the press and will be available for such showings as is permitted to the public. I would like also to call to your attention that Mr. Albin in making these statements has shown considerable courage. He has signed this statement, he has sworn to it and he is prepared to back up any of his statements.

I read to you now from his affidavit the questions and asnwer as given by him:

Q Will you please tell us your name and occupation?

A J. D. Albin, unemployed since January 7th and ex-member of Teamsters' Local No. 5.

Q Mr.Albin, will you please tell us

what you know about Mr. Ed Partin's trip to Cuba in November, 1960?

A Mr. Partin asked me on a Monday morning some time late in November to take him to (18) Moisant Airport in New Orleans which I did. I saw him board the Cuba flight, the Havana flight for Cuba. Later in the day I received a phone call at my home from Partin. He told me he had been in touch with the office and he asked me to find out why Otis Tynes had quit, that the office girl had told him that Otis had resigned that day, which I did. A.G.Klein and myself then went to the hall late in the afternoon, reached Partin at the Plaza Hotel in Havana, Cuba, and relayed the message to him that he has asked for. The next day in the afternoon we went down to the Moisant Airport to pick Partin up. We saw him as he departed from the Havana flight with a coat over his arm. He went through customs, came out, he went to the automobile where he taken a package out -- out of his coat from under his arm somewhere and put it in the back of the trunk of the car and we proceeded on back to Baton Rouge.

Q Anything you'd like to comment on Otis (19) Tynes' explanation as to why he had quit the Union?

A Otis told me he had quit because he didn't want to be made the goat for Partin in the Louisiana Creamery

contract. Ed had gave me a message that morning to, in the Louisiana contract and told me to take it back and tell Otis to go and renegotiate this contract. This is a contract that was voted on by the members on November the 21st and accepted, a contract proposal from the company, which we felt at that time was a fair contract. This contract was later renegotiated and signed, giving up many benefits, wages, boys working longer hours and was signed without the ratification of the membership.

Q Do you have any other indication of, ah, contract---well, ah, you said a moment ago that Partin did go to Cuba and you gave the indication how you knew he was there. Did he tell you anything about his conversations there or whom he met with?

A He told us he met with Fidel Castro and Roual Castro, Fidel's brother. He said (20) that Fidel spoke very broken English but his brother spoke much better English.

Q Did he indicate whose business he was on down there with the Castros?

A He told us when he left that he was going to Cuba to take care of business for Jimmy Hoffa.

Q Did you see any other indications that he had contact with officials in Cuba?

A Yes. We later saw a letter that was written to Partin from Lopez, Ernesto Lopez of Cuba, and we taken this letter and put it in the form of a handbill and put it out to the membership at the time.

Q Do you know anything unusual about the handling of the union funds during this period?

A Yes. It was too numerous to relate here in the time allotted. He had used union funds for his own personal benefit, to pay house notes, he rented a car for his girl friend in--- Mildred Kelly, in Childressville, Alabama. He would also take numerous amounts of money out of the cash drawer during the week and at the (21) end of the week he made this up by making a check out to someone else who would endorse it and they would deposit it into the union fund.

Q Did you or any other members of the Teamsters' Union who were aware of this take any sort of action to correct it?

A Yes. Frank L.Doughty on March the 21st wrote a letter to Arthur Goldberg with a copy being sent to James R. Hoffa, asking for an investigation of Teamsters' Local No. 5. On the 25th, Frank L. Doughty received a reply from James R. Hoffa, asking for information, any and all information concerning

these charges. On Monday morning, Frank L. Doughty, which was the 27th of March, he mailed this information to Jimmy Hoffa. Later in the day, I found out that he had had, on the letter from Hoffa, it said on the bottom a notation "copy sent to Teamsters' Local No. 5." Now Ed received this copy on Monday. He became pretty riled up about it and in the afternoon, A.G. Klein, who was still working at that time as an (22) assistant and an organizer for Ed at Teamsters' Local No. 5 told me that Johnny Birch had stopped him on the Airline Highway and told him Ed wanted him to help get rid of the safe that night, that there was going to be an investigation of the local union and the records had to be destroyed. It was going to take four men to do it. He told me who all was supposed to be in on it and that they were supposed to take it to Bruce Hunt's Shop. That's the man that owns Triple "A" Construction and cut it open that night, that it had been okayed with Bruce. Klein didn't want to be involved in this, so he got his brother in New Orleans to send him a telegram so he could get out of it and still stay in Ed's good graces because at this time he still felt that it was further information that could be derived from his employment in Teamsters' Local No. 5, and we knew something had to be done if we were to ever straighten out the local union, and the (23) onliest way to straighten it out was the removal of E. G. Partin. Now, we knew that this safe was gonna

be removed that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson--

I am breaking now in the reading of this affidavit by Mr. J.D. Albin to explain to the public that this material I am reading is a signed affidavit by Mr. J.D.Albin. It was originally given on film by Mr. J.D.Albin and has been so shown to the press, but because of legal admonitions given by their legal counsel to the station it is being presented here over this station by me and read directly from the affidavit. The language used here is exactly from the affidavit such language as is used by Mr. Albin in the affidavit which he has signed and presented on film. I continue the affidavit of Mr. J. D. Albin:

Now, we knew that this safe was gonna be removed that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also (24) knew of money that had passed hands between Ed and Herman Thompson-- from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police Office through that, and it was out of the jurisdiction of the City Police.

Q What did you do then?

A Well, we rode around a while trying to decide what to do. Finally, we decided that we would go to the Hall ourselves to see if there was any way we could stop them if we caught them coming out with the safe. We arrived a little too late. Somewhere in the neighborhood of nine o'clock the safe was gone. The next morning there was an investigation. Brother Herman Thompson came out and investigated it and I understand that Lieutenant Joe Green showed up. They seemed to think it was a job by a professional. I agree with them.

Q Ah, this, ah safe being gone--did this (25) destroy the evidence?

A No. Klein and myself had taken pictures of the checkbooks previous to this and photostated other documents that we thought would help in the case.

Q Did the safe ever show up?

A Yes. The safe turned up a few months later when a young man by the name of Forman dived off the river bridge and hit his head on this safe and killing himself.

Q This sounds to me like a death resulting from the commission of a felony, That's murder, isn't it?

A That's the way we feel about it, but

so far, nothing's been done.

Q Now, after you sent this information to, ah, Hoffa, that had been photographed from the safe, did he take any kind of action?

A Yes. He sent a panel in here to hear Frank L. Doughty's charges. When they came in, they told him they had something like an hour or forty-five minutes to hear these charges then and they had to catch a plane out of here, so Doughty knew that no one could hear these charges in that short a (26) time, so he more or less got out of it and let it go at that. At a later date, an auditor was sent in from the International to audit the books, a Mr. Charlie Farrell. We felt this man was just and he found the books in terrible condition; in fact, he said a three year old child could run that local union better than Ed Partin was running it. He made his notations and comments back to the International Union, and we felt at that time that something was fixing to happen. During this period, then, we found out from the office secretary that numerous telephone calls had been made to local politicians and two politicians in Washington. They were all supposed to meet in Washington to try to cement Ed's relations with James R. Hoffa.

Q Would you like to comment on the names of the politicians in Washington who were called?

A Well, two that was supposed to be in Washington was Jimmy Morrison and Russell Long. They had two or three from here, Ossie Brown, Apple Sanders (at the last (27) minute for some reason or another decided not to make the trip, exactly why, I don't know).

Q Now, what happened, as a result of these telephone calls?

A Well, nothing was done after that so we figured that these people must have intervened. Now, at a later date, Klein and I then filed charges through the local union, through the local union executive board, got up a petition with something like -- a little over three hundred names on it and we made a trip to Washington see Jimmy Hoffa.

Q Who else went with you?

A A. G. Klein, myself, Prentiss Moak and A.D. Burris.

Q Did you get to see Mr. Hoffa?

A Yes. We saw Hoffa late that afternoon. We presented the petition to him and told him our story. He said it was hard for him to understand this about Brother Partin. He said that nice young Senator from down there, Brother --Senator Russell Long-- that he was in my office and he praised (28) Brother Hoffa (and there is a correction here in the affidavit and it should read "Brother Partin")-- I repeat -- he

praised Brother Partin to the highest and his standing in the community as being very good. He said, "I-- I don't understand this." We told him that we felt that Brother Partin had his political pull through some unscrupulous employees, that he was selling out his membership so he promised to send somebody in here to investigate it and do something about it, which never did happen.

Q What did you men do then, when you returned to Baton Rouge?

A We came back to Baton Rouge, we contacted, ah, the parties involved. Some of them we didn't even get an answer from. We did get an answer from Russell Long. We asked -- we told Russell what in the telegram-- we told him in the telegram we sent him what Jimmy Hoffa had told us. We also told him--about having positive proof of his dealings -- (of Partin's) dealings with Fidel Castro and the Communist regime in (29) Cuba, that we felt it would be to his interest and ours if he would cease supporting E. G. Partin. We received a telegram from Russell Long which I have here, and I will read the contents (quote from the telegram): "Your information concerning E. G. Partin and James R. Hoffa is completely erroneous. I have never met James Hoffa personally and I have not undertaken to give him any estimate of the standing of Mr. Partin or any of his officers. Neither Hoffa, Partin nor anyone else have asked me to

express my opinion in a matter of this sort. (Signed) Russell Long." Klein and I contacted Russell Long a little later on the telephone. He was not the distinguished speaker on that telephone, he was pretty well shook. He finally admitted that he had talked to Brother Hoffa for Ed Partin but only as he would do for any other employee for their employer, go to any other employer for an employee. What he didn't understand was this, that Ed Partin is not an employee of James R. Hoffa; (30) he is employed by the members of Teamsters' Local Union No. 5 for their benefit.

Q Do you know anything else about Mr. Partin's background and public record?

A Yes. I have what is known as a rap sheet here on Brother Partin. Just a few of 'em-- here is one in Roseburg, Oregon, robbery and auto theft, and was released at the Cisco County, California---there's about eighteen of 'em here. Another one here in Vancouver, Washington, investigated breaking and entering and pending. Another one in Monroe, Washington, second degree burglary from Clark County, seems like about fifteen years. I don't know how much he served, and then you've got one here I understand was a colored girl up in Woodville, Mississippi, raped and robbed with firearms.

Q Have you heard anything recently in trouble he had in Cuba, Alabama?

A Yes. But before I mention this, I would like to go back a little bit to a recent hearing that we had here where some fifteen or twenty people jumped A. G. Klein and myself at the local union hall. We were (31) told before we went into the hearing by one of the members, Emmett Tucker, that we were gonna get worked over as soon as we came out of that hall, so during the process of the hearing, I approached Mr. Charles Winters, Secretary-Treasurer, Joint Council 93 and Business Manager of Local Union 270, New Orleans, and told him what had been said, so he told us that something would be done about it and there would be protection outside the hall when we left, and I don't mind telling you that when I stepped out of that hall and saw Lieutenant Joe Green standing there with a riot gun I had cold chills running up and down my spine. I wasn't so much worried about those fifteen or twenty members that jumped us, I was worried about Joe Green, and I would like to say at this time that he made no attempt to help relieve the situation that was going on. Now, you mentioned another thing here, this Cuba, Alabama, deal. On December the 25th of 1961, Partin was involved in a hit-and-run auto accident in Cuba, Alabama, killing (32) a young soldier, an Air Force boy. There was three of 'em in the

car, two of 'em were injured and this boy was killed.

Q Now did this come to your attention?

A It came to our attention through some more of Mr. Partin's meddling with one of his member's family troubles, where two of the children that he--he got 'em hid off somewhere -- for this boy-- he's in jail, and his wife has been trying to find the children for something like two months, and they were witnesses to this thing that had taken place in Cuba, Alabama.

Q And has prosecution occurred as a result---

A No.

Q ---of this accident?

A No. There was found upon-- well, immediately upon return to Baton Rouge, that Partin got in touch with Lieutenant Joe Green, and it was cover up from the word go, even to the extent of having a union car repaired in Lutcher, Louisiana, in the name of Bruce Hunt.

Q Can you tell us why Mr. Klein is not here testifying today?

(33) A Mr. Klein met with an accident in St. Francisville, Louisiana, where a truck had dropped on top of

him loaded with about ninety thousand pounds of sand. This happened just a short while after he had testified in front of the Federal Grand Jury in New Orleans, and it's to my sorrow that I lost one of the, one of my closest and dearest friends, and---

Q I believe Mr. Klein was a family man, wasn't he?

A He sure was. He had five children, the youngest one about a year old, a year and a half old, and the oldest one about ten years old.

Q Was this the sort of an acciden you would expect for an experienced Teamster to become involved in?

A Well, no, I wouldn't.

Q As a working man, what is your reaction to Mr. Long's intervention into an affair of this sort?

A It is very much unappreciated. We feel, right, that this was, that he was meddling with the working men's affairs in this local union.

(34) This is the end of the affidavit. I have been reading from an affidavit of J. D. Albin giving you on television, the public, the affidavit that Mr. J.D. Albin has testified to himself in person on film and which has been shown to the press but which has been read by

me over this station because of legal admonition by their counsel to the station that it should be read by me, Phil St. Amant, rather than given in person by Mr. Albin. Mr. Albin was quite willing to give it to the public and will do so in the future as soon as a legal decision can be made in this matter. It is on film and it will be available for a later showing, and I wish to comment here once more that Mr. Albin has shown great courage in this matter, and I respect him for it.

And so, ladies and gentlemen, you have here a true story of why the ordinary little man has no protection under our laws---political influence for notorious criminals. I want a public statement by Mr. Long on why he felt justified in giving a good character to Mr. Partin and then lying about it. I demand that he tell us of any other deals and influence he may have had with Jimmy Hoffa. I demand that he explain his philosophy to the public on voting against the rights of the working man to have (35) a secret ballot to determine union fund expenditures and recall of union officers. I believe that you, the people, should ask him these questions. You have a right to know. This is Phil St. Amant, your conservative candidate for the United States Senate. Thank you! (End of Transcript)

A This is the transcript I followed.

BY THE COURT:

Q The one that is in the suit record?

A Yes, sir. This is not---it is as it came off the film sound track and except for the side remarks explaining about the affidavit, this is the same. The side remarks--

BY MR. KLEINPETER:

Q By "this" you are referring to the one in the record marked P-1?

A Yes. I would like to say that this little smear at the bottom which looks, it was probably a fine line and a reprint from something, does not belong. It reads from "I demand that" and continues here. This which is hardly a readable line is not a proper part of it. Some of the left edge is cut (36) off. However, this was a poor reproduction as I produced it in my headquarters.

Q Now, Mr. St. Amant, this tape recording that we played is the recording of the speech that you made at WAFB-TV on the night of June 27, 1962, is that right?

A It was the one that was aired.

MR. KLEINPETER:

In connection with his testimony, I offer, produce and file in evidence the tape that was just played and marked it as P-2.

(At this time court recessed for a short time and thereafter reconvened.)

Q Mr. St. Amant, prior to June 27, 1962, had you ever met Captain Herman Thompson of the Sheriff's office?

A Not to the best of my knowledge. He has just informed me in a con-conversation a few minutes ago that he knew me in a Sunday School class much earlier. I have just become aware since this instance that he is the younger brother of A.T. Thompson whom I knew very well from pre-school age on up through the First Methodist Church Sunday School until---I believe (37) until just before A.T.'s death, until we were both adults.

Q You knew nothing about his activities then at all personally or did not know him personally?

A I did not know him personally. I could be subject to correction on that. He says that we did know each other, but the age difference makes me suspect that he is confusing me with a younger brother. It was A.T., it was his older brother that I was in Sunday School with.

Q Now, Mr. St. Amant, was Mr. J.D. Albin a candidate for office in this same primary?

A He was not, no.

Q Was Lieutenant Joe Green a candidate for office?

A No, he was not.

Q To your knowledge, was Captain Herman Thompson a candidate for any office?

A No, he was not.

Q To your knowledge, did he hold any public office as of the date of this television speech?

A Yes, my understanding was that he was a Captain, which I believe the commission is given by the State of deputies for the Sheriff's office. He was and I believe he still is.

Q Is it an elective office, sir?

(38) A This was not an elective office. This is a public office so responsible to the public.

Q And did you know who the Sheriff was in East Baton Rouge Parish the date you made the speech?

A I did.

Q And who was that?

A Bryan Clemmons.

Q Do you have knowledge of how long Bryan Clemmons has been Sheriff in this parish?

A I understand he had been Sheriff quite a while. I had heard opinions on whether it was too long or not.

Q And was that an elective office or an appointive office?

A It was an elective office.

Q Now, sir, how long have you known Mr. J. D. Albin?

A I have known him since October of 1961.

Q And what was the occasion for you meeting Mr.Albin, sir?

A I was invited to his residence to meet with a group of Teamsters who had---were dissident within the Union Local No. 5. They had been getting the run-around. They had been getting two different stories from my opponent, and they weren't getting the protection they felt they were entitled to and they asked my help when they couldn't get the help that (39) they needed by seeking it through the normal means.

Q Now, sir, on your television speech, you made reference to Mr. Ed Partin's rap sheet. Did you have his F.B.I. record?

A I had his State Police record which made references to the F.B.I. one. I have checked that record with Mr. Tom Burbank and he has acknowledged that this is correctly the record.

Q Now, sir, as of the time that you got this affidavit from Mr. J. D. Albin did you know whether or not he had a police record?

A I had understood that he had been arrested for fighting, union activities and such. To the best of my knowledge then and now, I still have no information of his having any further police record than this, nothing such as breaking and entering, nothing such as the type we are speaking of as criminal action.

Q But you were aware of the fact that he had had some difficulties with the police either as a result of batteries or fighting or something?

A Union activities such as, by the way, as reported in here. When they came---beat him up at the Union Hall, yes, I was aware of this. I mean who is the "beater" and who is the "beatee" in these cases is sometimes the question at stake but he had been (40) involved.

Q Did he volunteer this information to you that you got in the affidavit or did you request that he give it to you?

A He volunteered the information to me.

Q And then you requested that he give it to you in affidavit form, is that correct?

A That is correct. I wanted to have some signed statements to know what the situation was. I have other affidavits, by the way, concerning some of the other details from other people, and I had them in my possession and had seen them and interviewed the other witnesses prior to such a broadcast to be sure that my facts were at least well substantiated.

Q Now, sir, at the time you made your speech, did you give any consideration whatsoever or anything at all to what effects the reference to Captain Herman Thompson's name in this speech might have upon him?

A Actually, when the original tape was made, and understand that when I read the affidavit I did not feel that I had any right to read parts of an affidavit or to just take sections from it. I do not understand the law on this, but I believe if I am going to give a document or affidavit, I should give the whole thing, and as I asked the question, I never mentioned (41) the name of Herman Thompson, Herman Thompson wasn't even in my mind. I didn't even ask anything concerning the Sheriff's office. I asked quite an entirely different question, as you will see from the transcript, and out of this came a long story in which Mr. Thompson's name was used as explanation of why he felt there was a close personal relationship there that would keep him from

going to the Sheriff's office. I neither elicited his name nor did I anticipate his name. Now, when I read the affidavit, I knew the name was in there and I did not consider that this was going to do anything to Mr. Thompson. In fact, I believe it has not. He was a Captain and is a Captain. I don't believe he has been suspended for five minutes and I don't believe he has lost any pay.

Q Mr. St. Amant, with that knowledge and knowing that this reference to Captain Thompson was in this speech, you then permitted this very speech that we have listened to to be transcribed and circulated to the members of the press?

A I certainly did. I don't know what this money was for, Mr. Attorney. I did not suggest what the money was for, nor has--- did Mr.Albin suggest what it was for. This could have been for his favorite charity for all I know, but as Mr. Albin explains, he couldn't (42) go to him because he was contributing to this man, for whatever purpose. A close personal relationship existed.

Q Did Mr. Joe Cooper give you information with reference to this money passing?

A No, he did not. I don't believe Mr. Cooper knows anything about it except he heard the broadcast. You may have heard it yourself, sir.

Q Now, sir, in answer to the interrogatories which I propounded and particularly Interrogatory No. One, I asked: "Please state the identity, location and addresses of all persons having knowledge or information relative to the determination of the issues involved in the captioned case, and which you intend to rely upon to prove any or all of your defense to this suit." You named Marjorie Ann Smith of 7339 Bonner Avenue, Baton Rouge, Louisiana---

A She is present.

Q -- J. D. Albin, 6844 Buttonwood Drive, Baton Rouge, Louisiana. Is he present?

A No, he is in Touro Infirmary. He had a heart attack and can be found in Room 460.

Q Joe Cooper, 3176 Alaska Street.

A Yes. Of course, when this interrogatory was given, I felt that it was a fishing expedition, and I didn't (43) know how broad the questioning was going to be. If the questioning gets into certain areas, I will call Mr. Cooper, but as the---so far as these particular things are concerned, I have no information on the specific points thus far covered from Mr. Cooper and I don't believe he will be a part of my case.

Q Bryan Clemmons, Sheriff.

A We may have to have Mr. Clemmons here to testify that he said that he knew -- he said this in your presence-- he said that he knew that the money had been received by Herman Thompson for certain purposes from Ed Partin.

Q Deputy J.D. Sharp.

A He may or may not be called. It depends upon all---

Q Deputy James Rainwater.

A Did you want me to give you the background of each of these men?

Q No, sir, I am just asking you were-- did any of these people give you any information relative to any money passing between Herman Thompson and Ed Partin?

A These people in some cases, Rainwater, knows of the close relationship that existed between Herman Thompson and Ed Partin because he accompanied him many times to the Hall. If necessary, we will call Mr. Rainwater.

(44) Q Otis Tynes.

A It has nothing to do with the money.

Q Otis Tynes.

A Otis Tynes can testify to the closeness of the relationship, the first-name basis, that existed between the two.

Q Deputy Carl H. Allen.

A You are going over quite a list there. You ask a lot of questions, and I try to give you the answers. I don't --I don't know just what you want me to answer on each of these.

Q How about Mrs. Mae Booth?

A Mrs. Mae Booth is aware of the relationship that existed and also the status of Partin at the time concerning the children.

Q Mrs. E. G. Partin.

A Mrs. E.G. Partin, I am sure, knows the relationship between Partin and Mr. Thompson. It just depends on how much the prosecution presents as to how many witnesses I am going to need to call.

Q Now, sir, how long have you known Mr. Ed Partin?

A I wouldn't know Mr. Ed Partin except from his pictures if he walked in here. I don't know the man. I know him by name and reputation. I know him by his court record, his, let us say, his rap sheet and (45) I am sure that he knows me the same way.

Q Did you know that Mr. Ed Partin was the Business Agent for the Teamsters' Local No. 5 here in Baton Rouge?

A Yes, I knew that. I sure did.

Q Do you know any business agents for

any unions here in Baton Rouge yourself, Mr. St. Amant?

A I don't know whether I do or not--

Q Are you aware of the fact that because of some disturbances one way or another, it might be necessary for the law enforcement officers at one time or another to come in contact with and know business agents?

A Oh, yes, I am aware of that.

Q Then, sir, was it your purpose to imply an unworthy motive in the relationship between Captain Herman Thompson---

A No, merely in repeating the affidavit to establish the close enough relationship between the two, whether for business reasons or for whatever, that there was a close enough friendly, first-name relationship that it was not logical as explained by Mr. Albin for him to go and report this thing to the Sheriff's office where he believed Ed had a very close in.

Q Then, sir--

A Or may I back up one minute on my testimony with (46) reference to what you asked about Sheriff Bryan Clemmons and why me might be called? There is a possibility he will be called to repeat the statement that he made in your presence and mine that he did in fact write the letter out west recommending Ed Partin for parole and giving

him a good reputation so that he should be released and he asked me in your presence if I would like to see the letter, and I told him that it wouldn't be necessary. As he explained, he did it as any public official would, but it was one of the letters that went out there and if I do call him, this would be one of the purposes of calling him. This is a relationship which would explain why it was not likely that Mr. Partin--- I mean Mr.Albin should go to the Sheriff's office. I don't say this is an improper thing to do. I did not say so at the time nor did I infer it, I just say that you don't go to a fellow's friends to report a complaint.

Q So you left, you made the remarks, and let the inferences for the public to draw what they might, is that right?

A I made the remark and let the public draw the conclusion that they might from the remark, which I believe was properly made at the time. I think you will find that Mr. Herman Thompson's name, except (47) from in quoting Mr. Albin, was never mentioned by me and no inference was drawn by me in further questioning that followed this. I had no interest at the time in Mr. Thompson. I had interest in Senator Russell Long, and I wanted to establish that here is a man in the public eye in a most disreputable fashion, and I am sure Mr. Thompson did not think I was speaking of him.

I was speaking of the business agent who was notoriously in trouble at the time and was being helped out by a United States Senator to the detriment of his men, to the detriment of the working people of this parish. I believe this was true and I presented it as such. I have had no suits or opposition on this score from anybody else.

Q In other words, Mr. St. Amant, you were after the big shot, so to speak, Senator Russell Long, and were not worried about the smaller individual, so to speak, that might have been involved down the way, is that correct?

A Let's not draw an inference from my answer on that. I was not concerned with them. I did not think it concerned them.

MR. KLEINPETER:

That's all, sir.

WITNESS EXCUSED

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(48) MR. KLEINPETER:

May it Please the Court, I had subpoenaed Mr. Thomas Gibbens, who is the Manager or President of WAFB Television Corporation, first to produce this tape which he previously produced in compliance with a subpoena duces tecum and further to testify as to the

range of WAFB-TV Television Station. Mr. Van Buskirk has agreed to stipulate with me that if Mr. Gibbens were subpoenaed and did testify that he would testify that the range was as it is reflected on this exhibit marked in white inside circle marked P-3 which I offer for that purpose only.

MR.VAN BUSKIRK:

I also stipulate, Your Honor.

MR. KLEINPETER:

So with that stipulation, I offer this to show the area that WAFB-TV does cover, just the white area. The blue area on the outside is questionable.

(At this time court recessed for lunch and thereafter reconvened.)

(49) MR. KLEINPETER:

Sheriff.

BRYAN CLEMMONS,

called as a witness in behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEINPETER:

Q State your full name, please, sir.

A Bryan Clemmons

Q Are you the Sheriff of the Parish of East Baton Rouge, sir?

A Yes, sir.

Q How long have you been the Sheriff?

A Since 1948.

Q And how many times have you been elected to your office?

A Five times

Q Sheriff, is Captain Herman Thompson employed by your department?

A Yes, sir, he is.

Q How long has he been there with you, if you can recall, sir?

A He has been with me ever since I became Sheriff.

(50) Q Now, Sheriff, besides performing the ordinary duties of law enforcement that a law enforcement agency performs, does your office under your direction participate in other civic endeavors?

A Many times yes, sir

Q In that connection, do they participate in fund-raising drives for various organizations?

A We have.

Q Can you name some of the ones that you participate in?

A Well, the Baton Rouge Kids' Baseball Clinic, the Mothers' March, March of Dimes, Elk's Christmas Funds Baskets, the Eagle's Christmas Baskets. That's about the main ones I can think of right now. Oh, yes, Lion's Club Light Bulb Sale, all those things.

Q In that connection, sir, do your deputies participate in soliciting and taking up funds for you?

A They do.

Q Do they contact various agencies and organizations within the parish?

A Right.

Q Sir, in that connection, has Captain Herman Thompson, to your knowledge, ever solicited particularly the unions in East Baton Rouge Parish for any of those funds?

A Captain Thompson has, and he has been in charge of (51) practically all the fund-raising drives, and it has been his particular assignment to contact the labor unions and trade unions in the parish.

Q This is part of the functions of your office that you perform?

A Well, it not a function exactly,

I mean it is not a duty. It is an extra-curricular duty.

Q It is a matter of public relations?

A Right.

Q Sheriff, what schools, to your knowledge, has Captain Thompson attended since he has been under you in the Sheriff's office?

A He is a graduate of the F.B.I. National Academy. He is a graduate of the Southern Police Institute of Louisville, Kentucky, a graduate of all phases of the Louisiana State University's law enforcement training program. He is a graduate of our own training school.

Q And has he worked up from a Deputy to the rank of Captain under you?

A That is correct.

Q Now, sir, to attend the F.B.I. National Academy and these others, does he have to be investigated as to character and ability?

A As far as the F.B.I. Academy is concerned, the investigation is the same as if a man is being (52) employed as a special agent of the F.B.I. It is that rigid.

Q And Captain Thompson is a graduate of this particular academy, is that right?

A He is, yes, sir.

Q Now, Sheriff, do you know or did you know Mr. Ed Partin, the Business Agent for the Teamsters' Union?

A I do.

Q Did you also know the business agents of most of the rest of the unions in town, if not all of them?

A I would say I know ninety-nine per cent of them.

Q Is it necessary that your deputies contact various ones of these officials and particularly the business agents occasionally?

A Yes, sir, it is.

Q And particularly would Captain Thompson have to do such--

MR. VAN BUSKIRK:

Objection. If the Court Please, a certain amount of leading I can't object to but we are getting the testimony of counsel.

MR. KLEINPETER:

I agree with Mr. Van Buskirk. I withdraw the question.

(53) Q Would, sir, it be a part of the duties of the Captain of your Patrol Division to have any contact whatsoever with the business agents of

the various unions in town, sir?

A Yes.

Q Would it be equally as true, that is, as to a duty, for him to contact members of employer groups such as, not in employer groups but management. In other words, is he just as familiar with men connected with the management in town as he is with the business agents?

A Yes, sir.

Q Now, sir, during the time that Captain Thompson has been a Captain and been under your direct supervision in the performance of his duties, what kind of employee or Captain would you classify him, sir?

A Excellent.

Q Have you ever had any reason to question his integrity or anything about any of his actions, officially or otherwise?

A None whatever.

MR. KLEINPETER:

I tender the witness.

(54) CROSS-EXAMINATION
BY MR. VAN BUSKIRK:

Q Sheriff, directing your attention to the specific allegation in this

lawsuit that a statement was made by Mr. St. Amant to the effect that money had passed from Ed Partin to Herman Thompson, do you have any knowledge as to whether any money did pass from Ed Partin to Herman Thompson?

A Yes, sir.

Q And did such money pass, to your knowledge?

A Yes, in the form of a check made to the Baton Rouge Kids' Baseball Clinic each year.

Q And insofar as you know, that is all that did pass?

A Yes, sir.

Q Now, did you hear this broadcast on which Captain Thompson's name was mentioned?

A I did not.

Q Directing your attention to approximately June 28, 1962, when the broadcast was apparently made--June 27, 1962-- do you recall what position Captain Thompson held with your office at that time?

A He was Captain, I feel sure. I would have to consult -- I mean check the records to be positive, but I feel-- I think Herman has been a Captain for (55) six or seven years, at least.

Q He still is a Captain at this time?

A That's right.

Q He has not been demoted in rank in any way?

A No sir.

Q Or demoted in assignment?

A No, sir. As a matter of fact, his present assignment is broader in aspect than the one he was relieved of.

Q Since that time he has received a more important assignment in your office, is that a fair statement?

A Yes, sir, he has a whole lot more personnel to supervise and more responsibility and everything.

Q Has he suffered any diminution in salary since that time?

A No, I believe he has been increased.

Q Now, before the statement was made about money passing from Mr. Partin to Mr. Thompson, you were aware of the fact that he had brought checks from Teamsters' Union No. 5?

A Oh, yes, we have a record of it in the office. In fact, all the contributions we handle for any drive is a matter of record in our file.

Q That was no news to you as Sheriff and didn't shock you?

A That he was receiving money for the Clinic?

(56) Q That some members of the union might be aware that Mr. Partin was giving Mr. Thompson some money for some purpose?

A No, it came as no surprise to me.

Q And that did Captain Thompson no harm in your sight then as the Sheriff of this parish?

A No, sir.

Q Sheriff, to your knowledge, did Captain Thompson ever receive any cash other than checks in these solicitations that he made for your office?

A Oh, yes, he has gotten quite a bit of cash from other sources but not from the one you refer to.

Q You have no knowledge of him receiving any cash from Mr. Partin?

A None whatever.

MR. VAN BUSKIRK:

No further questions.

****

WITNESS EXCUSED

(57) MR. KLEINPETER:

Captain Thompson.

(58) HERMAN ARTHUR THOMPSON,

the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEINPETER:

Q State your full name, please, sir.

A Herman Arthur Thompson.

Q Where are you employed, sir?

A East Baton Rouge Parish Sheriff's office.

Q How long have you been so employed?

A Since 1946.

Q By whom were you first employed in the Sheriff's office?

A Newman DeBretton.

Q And how long have you been a Captain?

A I was made Chief of Detectives in 1955, and I think at the end of that year a Captaincy was added onto it. I have been a Captain since 1955 or the first par of 1956.

Q Captain Thompson, where were you

born, sir?

A Right across the street here.

Q Were you born and raised in Baton Rouge?

A Yes, sir.

(59) Q What schools did you attend?

A I went to Beauregard Grammar School, Baton Rouge Junior High, graduated from Baton Rouge High, attended L.S.U. one term and then went to Southeastern one term.

Q Were you a veteran of World War II?

A Yes, sir, I was in the Navy.

Q What schools have you attended as a law enforcement officer?

A In 1954 I was the first Deputy Sheriff in the United States to graduate from the Southern Police Institute. I went to the F.B.I. Academy in 1959. I have been to the Homicide Seminar in Austin, Texas. I have been to the Supervisory Personnel School conducted by the National Association for Chiefs of Police which they had at the City Police. I have been through the Louisiana State University law enforcement program, and I have graduated through numerous schools which our office has held.

Q Now, in the Sheriff's office at

this particular time, what is your--what are you in charge of, sir?

A I am in charge of all uniformed Patrol Divisions.

Q How long have you been in charge of that particular division?

A Since January 1, 1962.

(60) Q Captain Thompson, are you married?

A Yes, sir.

Q Do you have children?

A Yes, sir, I have two boys.

Q And where do you reside, sir?

A 10454 Goodwood Boulevard.

Q Captain Thompson, did you ever know Mr. Phil A. St. Amant?

A I knew him in Sunday School when I was at the First Methodist Church, which has been quite some years ago.

Q Sir, have you ever run for political office?

A I never have.

Q Have you ever held any type of elective office?

A No, sir.

Q Do you know Mr. J. D. Albin?

A I worked on a case with the District Attorney and came to the Sheriff and told him that there had been a man beaten up on the job over some union dispute and that he did not think the case was complete. The Sheriff assigned me and I went to this job and stayed out there some two days or better and took statements from everyone there and the last place I went, I went by Mr. J. D.Albin's home, walked in and introduced myself to him, told him who I was and what I was (61) investigating and told him I would like to get some information from him. He advised me at this time that he had consulted his attorney Mr. Ossie Brown and all he could give me was his name, age and address, which I accepted, thanked him and left.

Q Now, do you know or did you know Mr. Ed Partin who was the Business Agent of Teamsters' Local No. 5?

A Yes, I know him well.

Q How long have you known him?

A I met him---Kaiser had a strike out there once---and had a little dispute, and I knew him there and then at Kan-Jax. I would say some six or seven years, I imagine.

Q You say you met him in a little dispute at Kaiser. Was that a labor strike?

A Yes, sir.

Q What was your connection with that, sir?

A I was out there to try to prevent any trouble and do what we are supposed to do, see that the law is enforced, try to enforce it.

Q What about at Kan-Jax Chemical Company, was that a labor strike?

A That was a labor strike there, too.

Q Was that with the Teamsters' Local, also?

A Yes.

(62) Q Was there any difficulty in that connection?

A There was quite a bit.

Q What was your connection with that?

A Going out and investigating numerous incidents that happened and we had cars stationed there for a good while, and once when the transformer was out I was sent out there while it was replaced.

Q Captain Thompson, have you ever investigated any disturbance at the Union Hall, that is, the Teamsters' Union Hall?

A I have never been called on any disturbances but I have been out

there on numerous burglaries.

Q Was that at the Hall itself?

A The first one I was called on was when it was on Chippewa. Someone had broken in, rifled it, which the people were later caught, and it turned out it was a fellow, to the best of my knowledge it was a man named Allen who was sent up to the penitentiary out of New Orleans. He was caught down there for burglary. I got to know Mr. Partin during that and his secretary--I think it was a Mrs. Bourque, Pi Bourque.

Q Is that while you were investigating the claim?

A That's right.

Q Did you have any occasion to investigate any other (63) burglaries or any other offenses?

A There must have been five or six more after that. One more was cleared and the rest of them, to the best of my knowledge, have never been cleared.

Q Did someone else investigate those with you?

A The onliest one which they made reference to where the safe was taken, I went on that call with Chief Criminal Deputy George LeBlanc. He made the report. The

Crime Lab from the State Police was there and assisted us, and also I will have to admit that there was not as much effort put out as should have been for the simple reason the night before someone had burglarized Food Town of over fifteen thousand dollars and a lot of drugs were involved and it had everyone of us tied up on that.

Q Captain Thompson, have you ever participated--or have you ever received any funds of anything at all from Ed Partin?

A Yes, I have gone by there and picked up every year a check for the Baton Rouge Kids' Baseball Clinic with the exception of this last year which he refused.

Q Did you solicit any other unions?

A Mr. Conran generally signs other checks for all the unions. They got together on it and it comes through, I think they call it the Baton Rouge Central Labor Union and it comes from Mr.Conran. He signs it and (64) then calls Charlie Bedell and Charlie gets it for us, but before that I had gone to Mr. Durbin with the Pipefitters when he was with them. I have asked Louis Thompson with the Electricians, Marvin Adams with the Carpenters, Willie Dipaola with the United Mine Workers, and there may be several others. I can't think of them right

now.

Q Now, what other type of drives or solicitations have you participated in as an officer?

A Well, I am in charge of seeing that the boys have a bell ringing for the Salvation Army and the Volunteers of America every year and the Mothers' March of Dimes, and this year we helped with the Cystic Fibrosis, something like that, and the Baton Rouge Kids' Baseball Clinic in which you solicit and then later on they have a ticket sale for season tickets. We sell those. We participate in the Shrine Circus and help sell tickets for that, too. There are quite a few. It would be hard to name them all.

Q Is that above your usual duties?

A Yes, sir.

Q Do you all get paid anything for that?

A No, sir, we try to help people.

Q Have you ever had any connection with Mr. Ed Partin (65) other than as a police officer or law enforcement officer?

A None. I knew him and he called me by my first name and I called him by his first name, and I have been out there on occasions, and he

couldn't be what I would call a close friend because a close friend is someone that you associate with. I mean the only time I have ever been around him has been in the Union Hall, never have ever associated with him anywhere. I would go somewhere and drink coffee or go out with your wives dancing or play golf, fish, bowl or something like that, and I have never done anything like that.

Q. Captain Thompson, did you hear this speech that Mr. St. Amant made on June 27, 1962?

A No, sir, I did not. I was at the bowling alley.

Q What if anything brought your attention to it?

A When my wife and two children came to the bowling alley with me and when I drove up in the driveway, my neighbor ran out and told me that some man had been on the radio or the television and had called me some kind of thief and all kind of names, and she didn't go into details and all I told her, I said, "Well, I don't know anything about it," and I said, "I will have to find out first."

(66) Q Did you hear any more about it?

A Yes, sir. For quite a while every time I would go bowling or play golf or go out in the public

somebody would have some kind of comments. Of course, I think most of it was joking but it did get to where it was irritable and I have had to control my temper quite a few times.

Q Did it upset your wife any?

A It upset her very much, my mother, too, she has a bad heart.

Q Have you at any time ever accepted anything from Mr. Partin or any other person?

A I have not. I think if I be permitted, I could tell how all this originated.

Q No. You have never accepted anything other than the contributions which have been received from these charities and things that you all solicit for, is that correct?

A That is correct, sir.

Q Did Mr. Partin ever offer you anything?

A He did.

Q What did he offer you?

A When I graduated from the F.B.I. Academy in 1959, I think it was some time in the latter part of June I was out at his office on a call, and he told me (67) that I had cleared

several burglaries and my men were instrumental in it, too, and that they would like to give me a present for graduating from the F.B.I., and I told him, "No, thank you," and at that time he again told me, he said, "You go down to Welsh and Levy's and charge a suit," and he said, "It will be all right," and I told him, I said, "In about ten years from now somebody would come up and see where I had charged a suit to you," and I said, "It would be the most expensive thing I had ever done in my life. I think you just the same." He then told me he would give me a check which I thanked him, and he said if I didn't want that he would give me the cash, and I told him, "No, thank you, I don't want anything. I am just doing my job."

Q Did you report that to the Sheriff?

A I came right straight to the Sheriff and told him.

Q Captain Thompson, do you get around to various places, I mean both individually and representing the Sheriff in attending certain functions?

A I do.

Q And is that limited to this parish or do you go to other parishes in other cities?

A I have been in this parish and other cities, too.

Q And do you have a wide circle of friends?

(68) A I think I do.

MR. KLEINPETER:

I tender the witness.

CROSS-EXAMINATION

BY MR. VAN BUSKIRK:

Q Captain, then you have received cash donations from Mr. Partin then?

A To the best of my knowledge, it has always been a check.

Q Well, a check, money donations?

A For the Baton Rouge Kids' Baseball Clinic.

Q Right. You didn't keep that secret, did you?

A No, sir.

Q Now, isn't it quite likely that the members of his union knew that that donation was being made?

A I would imagine.

Q Your testimony is that you had known Mr. Partin for some six or seven years and knew him on a first-name basis?

A That's right.

Q You called him "Ed" and he called you "Herman" normally?

(69) A That's right.

Q Isn't it true that you were a rather frequent visitor at the Union Hall and used to drop in once a week or maybe every ten days?

A That's right.

Q To pass the time of day?

A To pass the time of day and just to talk to the two secretaries, to use the phone and different things like that.

Q Now, this statement that was read over the radio: "We also knew of money that had passed hands between Ed and Herman Thompson--from Ed to Herman." Do you regard that as being true or untrue?

A Well, he has given me the checks for the Baton Rouge Kids' Baseball Clinic.

Q It isn't a case of something that just never happened, somebody pulling it out of thin air and giving you a bad name?

A He didn't state what it was for. It was an inference of what he said.

Q You indicated, Captain Thompson, that you had known Mr. St.Amant some time ago. Was that practically a childhood acquaintance?

A It was between the ages of ten and fifteen. It was he and he had a brother named Francis, and if I am not (70) mistaken, there was one named Alfred. He had a brother named Francis, one was Phil, too, and if I am not mistaken there was one named Alfred, either a cousin or--

Q Since you all were ten or fifteen years old, have you known each other or had any---

A Had no dealings with him whatsoever.

Q Had no dealings, and you are a man in your forties now, is that correct?

A That's right, sir.

Q So that for the last twenty-five years, approximately, you and Mr. St. Amant have had no connection one with another?

THE COURT:

Answer out loud.

A No, sir, no association.

Q There was as far as you know no bad blood of any kind between you?

A Not to my knowledge.

MR. VAN BUSKIRK:

No further questions.

(72) *********

(73) MR. KLEINPETER:

We rest, Your Honor.

(At this time court recessed for a short time and thereafter reconvened.)

MR. VAN BUSKIRK:

Mrs. Marjorie Ann Smith, please.

MRS. MARJORIE ANN SMITH,

called as a witness in behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VAN BUSKIRK:

Q Will you state your full name, please, ma'am?

A Marjorie Ann Smith.

Q Your address?

A 6922 Perimeter Drive, Baton Rouge.

Q Directing your attention to the latter part of February in the year

1961, where were you employed?

A For Teamsters' Local No. Five.

Q In what capacity were you employed?

A Secretary.

Q Do you know Mr. Ed Partin?

(74) A Yes, sir.

Q Do you know Captain Herman Thompson?

A Yes, sir.

Q Directing your attention to that period of approximately February and March of 1962, did you see Captain Thompson at the-- I beg your pardon----

THE COURT:

What date is it? I am confused because you said two dates.

MR. VAN BUSKIRK:

I beg your pardon, Your Honor. My error. It is the latter part of February and the first part of March, 1961.

Q During that period, did you see Captain Thompson at the Teamsters' Local No. 5 Hall?

A Yes, sir, I did.

Q Once or more than once.

A Well, during that time I think it was just one time he came by but he had been by the hall quite often.

Q At about the end of February, 1961, did Mr. Partin give you any instructions with respect to Captain Thompson?

A Yes, sir.

(75) MR. KLEINPETER:

May it please the Court, I am going to object at this time with reference to any instructions by Mr. Partin, and secondly, I am going to object to anything that took place in February or March of 1961. I specifically propounded interrogatories, and Interrogatory No. 9-C reads as follows: "In connection with any alleged money which might have passed hands between E.G. Partin and Herman Thompson, please give the dates and times that such transactions took place, the names and addresses of all persons present and the names and addresses of all persons who will be used as witnesses by you to prove such statements." In reply to that the answer to No. 9-C is: "On or about March 20, 1962, Jeanette Fletcher, and Marjorie Ann Smith."

Now, I object to anything about February or March of 1961.

THE COURT:

Mr. Van Buskirk, (76) would you care to make a statement?

MR. VAN BUSKIRK:

Your Honor, it appears that there may be some kind of an error in the answer to the interrogatory. I believe that the date that we are concerned about is 1961. I believe it is the correct date and I believe that it is probably the correct -- the answer in the interrogatory has the correct names but the wrong date by about ayear.

THE COURT:

I will allow the testimony.

MR. KLEINPETER:

Sir?

THE COURT:

I will allow the testimony with regard to those dates.

MR. KLEINPETER:

May It Please the Court, I don't know what the purpose of interrogatories is for if I can't propound them to get the time, not that it really makes that much difference but--

THE COURT:

If there is any surprise in connection with it, which I have no way of knowing right now (77) and I don't know if you know yourself I will be glad to let you examine her with regard to that out of the presence of the court or otherwise, and if necessary. I will continue it,

if need be.

MR. KLEINPETER:

That's all right, sir.

Q I believe the question I asked, Mrs. Smith, in the latter part of February or the first part of March, 1961, did Mr. Partin give you any instructions with respect to Captain Thompson?

A Yes, sir, he did.

Q And what were those instructions?

MR. KLEINPETER:

To which I object, Your Honor, If Mr. Partin gave any instructions, let's have Mr. Partin here to say unless they were said in the presence of Captain Thompson. I don't want her quoting Ed Partin or anybody else to us. I want Ed Partin on this stand to quote for himself, and I object to anything (78) Ed Partin told here on supposedly told her.

MR. VAN BUSKIRK:

I can't see where it's hearsay. She was employed there, Mr. Partin was her employer. She is going to testify, If the Court Please, to facts that were within her own personal knowledge. If that particular form of that question is objectionable, perhaps I can rephrase it, but she is prepared to

testify with respect to facts within her own personal knowledge and to what was done in response to those instructions.

THE COURT:

I overrule the objection.

MR. KLEINPETER:

Did I understand the Court to say that you are overruling my objection to the effect that I object to this lady testifying to what somebody else said?

THE COURT:

No, sir. What she testifies as to her own knowledge, she can testify not to the truth of any statements being made but as to what (79) instructions she may have been given in the course of her employment that she knows about it of her own knowledge.

MR. KLEINPETER:

I object to anything Mr. Partin told her, and anything she saw and anything she did, of course, in connection with her---

THE COURT:

I think the proper question is not what any instructions he may have given her but what did she do. All right, Mr. Kleinpeter.

MR. KLEINPETER:

That's all right that way.

THE COURT:

What did she do or what she saw with regard to Mr. Thompson, not what Ed Partin said. That would not be right.

MR. KLEINPETER:

I agree. That's all right.

THE COURT:

That would be hearsay, but what you did is important with regard to Mr. Thompson and what you saw.

A Just don't tell what Mr. Partin told me to do or what (80) I did?

THE COURT:

Just what you did, because the best evidence of what Mr. Partin said comes from Mr. Partin, and that's the reason for the ruling, and also, he can cross-examine Mr. Partin about what he said.

Q Mrs. Smith, you have testified that Mr. Partin did give you certain instructions. Now, the question that was objected to was what were those instructions, so I will ask you this question: After you received these instructions, what happened as far as your own personal knowledge is concerned? Tell what transpired, what you did and what anyone else did that you saw them do.

A Well, I called Mr. Herman Thompson at the Sheriff's office and he wasn't in, so I left word for him to call the Union, that we had something down there for him, and he was gone on a fishing trip and so a couple of days later Mr. Thompson came by the Union Hall and he said he wanted to pick up the envelope, and so Jeanette handed it to him out of her desk drawer and he folded it and put it in his pocket. In the (81) meantime, Jeanette and I before we called Mr. Thompson, we opened the envelope and it had five twenty-dollar bills in it.

Q After you opened the envelope and found the five twenty-dollar bills in it, what did you then do?

A We put it in another envelope and sealed it up.

Q Now, what type of an envelope was it in, Mrs. Smith, in the first place?

A It was a legal size envelope, one of the Teamsters', with the Teamsters' emblem and address on it.

Q Was it addressed to anyone?

A It just had Herman Thompson's name on the front of the envelope.

Q Are you familiar with the handwriting in which the name "Herman Thompson" was written?

A Yes, sir, it was Mr. Partin's.

Q Now, do you-- were there times when you saw Mr. Partin and Captain Thompson in the Union Hall?

A Yes, sir.

Q Can you tell the Court what their relationship was to each other, as far as you observed them?

A I would say it was friendly.

Q Did they call each other "Mister" or did they call each other by their first name or by nickname or do you know?

(82) A By first names.

MR. VAN BUSKIRK:

Tender the witness.

CROSS-EXAMINATION

BY MR. KLEINPETER:

Q What is your full name, please, ma'am?

A Marjorie Ann Smith.

Q What was your maiden name?

A Evans.

Q Where are you from originally?

A Brookhaven, Mississippi.

Q How old are you, Mrs, Smith?

A Twenty-eight.

Q What is your husband's name?

A Lamar Smith.

Q Where do you live?

A 6922 Perimeter Drive.

Q Perimeter Drive? Where are you presently employed?

A I am a housewife.

Q Did you ever live at 7339 Bonner Avenue?

A Bonner, yes, sir, I did.

Q When did you move to Baton Rouge?

(83)A In about the first part of 1958, I believe.

Q As near as you can get to it, what date did you move here?

A I think it would probably be---maybe it was September of 1957, I believe. I am not sure exactly.

Q Where did you move from to Baton Rouge?

A From Brookhaven.

Q Were you married at that time?

A Yes, sir.

Q How long have you been married?

A Eleven years.

Q How many children do you have?

A One.

Q What does your husband do?

A He works for Polk Chevrolet.

Q What kind of work did you do at the Teamsters?

A I was a secretary.

Q As a secretary what were your duties?

A I rang up the union duties and did the books, took in all the union dues, answered the telephone and made phone calls.

Q Did you type, take letters and things like that?

A No.

Q What kind of education did you have?

A I finished school.

(84) Q Which school? What kind of school?

A Brookhaven School.

Q High school?

A High school.

Q Have you ever been to business college?

A No.

Q When did you start to work at the Teamsters?

A About September of 1958, I believe.

Q You believe? You don't know exactly when you started?

A Well, I don't know for sure the exact date but I am pretty sure it was 1958.

Q Who hired you?

A Mr. Partin.

Q How long did you work at the Teamsters'?

A Until August of 1961.

Q Why did you leave there?

A Well, I was expecting a baby.

Q And have you been back to work since then?

A Yes, I worked one time since then.

Q Did you work with the Teamsters'?

A No.

Q Did you ever work for anybody prior to going to work for the Teamsters'?

A For anybody?

(85)Q Yes.

A Yes.

Q Who did you work for prior to working for the Teamsters'?

A Well, I worked for Rosenfield's and I worked in Brookhaven in a dress shop and I worked in Biloxi at a department store and I think that's all.

Q Was your husband a member of the Teamsters' Union?

A No, sir.

Q Does he belong to a union at all?

A No.

Q Did he ever belong to one?

A No.

Q What kind of work did he do during this time?

A He was in the Air Force.

Q In the Air Force. Where was he

stationed?

A At Keesler Field in Biloxi.

Q That was all during the time that you worked at the Teamsters' Union?

A No. While I was working for the Teamsters' Union he worked for Pittsburgh Plate Glass and then he went to work for Polk Chevrolet.

Q When was he in the Air Force?

A Before we moved to Baton Rouge. He was in Alaska when---I mean I was living in Brookhaven and he was (86) in Alaska, and when he got discharged, well, we came back to Baton Rouge.

Q You don't recall what date you went to work for the Teamsters'?

A Well, I don't know exactly the date. It was around in September of 1958. I don't know the exact date.

Q You don't remember when you moved to Baton Rouge?

A Not exactly. It is either in September of 1957 or else---

Q What date was your child born?

A October 11, 1961.

Q And what day were you married on?

A April 19, 1953.

Q What date did Captain Thompson come to your office?

A I don't know the exact date. It was around--it was right after Jeanette started to work there and it was about a week or two before the safe was stolen. I don't know the exact date but I know it was right around in that time.

Q Right after Jeanette started to work there and about a week or two before the safe was stolen?

A Before the safe was stolen, that's right.

Q And that is the only time you ever saw Captain Thompson?

A No.

(87) Q How many times or how long had you known him or known who he was---

A When I first started working there, the office was on Seneca Street.

Q And did any other officers ever stop by there?

A Well, some times some would come with him.

Q Did you ever see any other officers besides Captain Thompson and somebody from the Sheriff's office?

A Not that I---

Q Ma'am?

A Some would come with Mr. Thompson is the only ones I ever remember and then they had a couple of break-ins down at the hall and there was some more in there, but I remember Mr. Thompson because he came by there more frequently.

Q And on this particular day now that he came to get this, how was he dressed, do you recall?

A How was he dressed?

Q Yes.

A Well, he had on casual clothes. He usually when he came by when he was on the job, he had on a suit but I believe he had on just casual clothes.

Q When you say "casual clothes," you mean he had on a sport shirt and pants?

A Sport shirt and pants.

(88) Q Do you remember what day of the week this was?

A No, I don't remember the day it was.

Q Now, do you remember what time of the day it was?

A It was in the afternoon.

Q In other words, it would be before five o'clock or after?

A It was before five --I would say it was between two and four.

Q Between two and four and where was the Union Hall located?

A On the Airline, Airway Drive.

Q Was that right off the Airline Highway?

A Yes, sir.

Q Did you see him when he drove up?

A No, I didn't see him when he drove up.

Q Did you see him when he drove off?

A No.

Q The front of the Union Hall is wide open, isn't it?

A The offices are not -- the windows are painted in the front of the Union Hall and the doors, they shut those and the offices are over to the side, and unless I wanted to get up and go outside and watch him leave, I mean---

Q You didn't make any effort to get up and watch him leave?

(89) A No.

Q Did you see what he had done with the envelope?

A Yes, he stuck it in his side pocket. He folded the envelope and stuck it in his side pocket.

Q He didn't open it up?

A No, he didn't.

Q As I understand it, you said that Mr. Partin handed you an envelope and told you that Captain Thompson would pick it up?

A He told me to call Herman Thompson.

Q And then you and Jeanette opened up this envelope, is that correct?

A That's right.

Q And then you switched envelopes and put the money in another envelope, is that right?

A That's right.

Q And when Herman Thompson came, you gave him the envelope that you had put the money into?

A That's right.

Q Why did you switch envelopes?

A Well, it had his name written on it and we tore it open and we

couldn't stick it back unless we put Scotch tape or something on it, so we just put it in another envelope and sealed it up.

Q Now, do you remember what day of the week that Mr. (90) Partin gave you this envelope and told you to call Captain Thompson?

A I don't know the exact date, no, sir. He was leaving town and he handed me the envelope and said to get in touch with Herman and tell him to come by and pick it up.

Q Do you know how long you kept the envelope before Captain Thompson got it?

A I think it was about two days after we called the Sheriff's office that he was off. I don't know how many days he had off but he was off and they said he had gone on a fishing trip.

Q What were your regular working days at the Teamsters'?

A Monday through Friday.

Q What were your regular working hours?

A Eight to five.

Q Did you call Captain Thompson during your working hours?

A Yes, sir.

Q Did he come to your office during

your working hours?

A Yes, sir.

Q Now, it wouldn't have been on a Saturday or a Sunday, is that correct?

A No.

Q Are you sure it was in the month of February, 1961?

(91) A I am not sure. It was either-- Jeanette started to work there in February and she hadn't been working there too long when this happened, as to pinpoint the exact date, I can't. It would be either the last of February or the first of March and that is when she started working there and I know it was just right before the safe was stolen.

Q Can you say it was definitely in the month of March, 1961?

A I can't say for sure it was the exact date, I can't.

Q Now, what prompted you and Jeanette to open the envelope?

A Well, we knew Mr. Partin was under investigation and we was just wondering what was in the envelope.

Q Did you ever discuss this with Mr. Partin after he returned?

A No.

Q And you continued to work for him from February or March of 1961 through October of 1961, is that right?

A Through August of 1961.

Q Through August of 1961 and you continued to work for him for that time, is that right?

A Yes, sir.

Q Now, did Captain Thompson ever come back out there any more?

(92) A I don't remember if he did.

Q Were you there March of 1960?

A March of 1960, yes, sir.

Q Did Captain Thompson come out there in March of 1960 to get a check in an envelope for the Children's Clinic?

A I don't know it was that date but I know he has been by and picked up some checks for Kids' Baseball. I don't know anything about the one for Kids' Clinic.

Q Did you ever report this to the law enforcement officers that Mr. Partin had given some money in an envelope to Mr. Thompson?

A I am not for sure. I have been before the Federal Grand Jury and I can't remember if that was brought

out or not.

Q I ask you specifically did you tell the Federal Grand Jury, Mrs. Smith?

A I don't know for sure. I can't remember.

Q The truth is that you did not tell them that, isn't it?

A Well, I don't know. I can't remember that I am certainly not going to lie.

Q Now, it was important enough for you to remember it to tell someone, particularly Mr. St. Amant, about it, wasn't it?

(93) A I didn't tell Mr. St. Amant.

Q Who told Mr. St. Amant?

A I guess J. D. Albin.

Q Why did you tell J. D. Albin?

A Because Mr. Partin was under investigation.

Q And was that before or after you left Mr. Partin's employment?

A That was before I left.

Q Before you left? And was that before or after Mr. Albin was Mr. Partin started their difficulties?

A It was before---

Q It was before?

A I meant Mr. Partin and Mr. Albin, I mean they were on good terms until later, I meant they were--- Partin thought that he was in with him.

Q Was it not a fact that you were dating Mr. Partin at that time?

A No, sir, I was not.

Q Had you quit dating him at that time?

A I never had dated him.

Q You never did date him?

A No, I certainly haven't.

Q You have never been out in his presence at all alone?

A I have been to have coffee with him.

Q Have you ever been farther than a coffee break with (94) him away from the office?

A I have come up to the Courthouse with him before.

Q You have never been further than the Courthouse with Mr. Partin when nobody else was along?

A I have taken him to the doctor.

Q Have you ever gone as far as say to the airport with him?

A I went out there to pick him up for --when his children---when I was working there, to pick his children up from the airport.

Q And have you ever gone to his house?

A I have been by his house to see his wife. Yes, I have.

Q Have you ever been to his house when his wife was not there?

A No, sir, I have not.

Q You have never been there when his wife was not there?

A No, sir, I have not.

Q When was the last time you saw Mr. Partin?

A Tuesday.

Q This past Tuesday?

A That's right.

Q And did he come visit you or did you go visit him?

A We passed in the hall in Washington, D.C.

Q I take it you all traveled up there separately, by (95) separate conveyances?

A Yes, that's right.

Q And were you testifying about some of Mr. Partin's difficulties up there?

A I did testify.

Q Who paid your way to Washington?

A The Federal Government.

Q Now, do you recall when you spoke to Mr. Albin about this envelope that you gave to Captain Thompson?

A Do I recall when I did?

Q Yes, Ma'am.

A No, I don't know exactly the date.

Q What was Mr. Albin's connection with the Teamsters' Union at the time that you talked to him?

A He was working with Ryder Truck Lines.

Q Was he an officer of the union?

A He had been an officer but he was working with Ryder Truck Lines at the time.

Q Was he ever an officer after that time to your knowledge?

A No, sir, I don't believe he was.

Q Who was the first person to contact you with reference to this particular thing after this lawsuit was filed?

A Mr. St.Amant.

(96) Q Mr. St. Amant. Did he come out to see you?

A Yes, sir.

Q Was that before or after he made this speech?

A It was after he made the speech.

Q And did he come ask you for the information or did you go to him and volunteer it?

A I think Mr. Albin must have told him.

Q Now, at any time while you were at the Teamsters' Union, working out there, did you ever see Captain Thompson do anything other than in his capacity as a Deputy Sheriff in the East Baton Rouge Parish Sheriff's office?

A No.

Q And every time he came there you knew he was with the Sheriff's office and called there as such, didn't you?

A Not every time. Sometimes he brought his little boy with him and I don't guess he---

Q When would that be?

A I don't know exactly how many times he brought his little boy by there,

but two or three.

Q Now, Mrs. Smith, did the Teamsters' Union contribute, and Mr. Partin, contribute to the various activities around Baton Rouge?

A Yes, sir.

Q And they contribute to nearly every one of them, that (97) is, of the major campaigns, didn't they?

A Yes, sir.

Q And there was nothing unusual for Mr. Partin to give money or a union check for something like the March of Dimes or the Kids' Baseball Clinic or anything like that, was it?

A He always usually gave a check. This was the first check I ever ever seen.

Q Did you always open up the envelope

A No, it was the first envelope that was given to me.

Q So you don't know what he gave to anybody, do you?

A I only know about that one.

Q That was because you and Jeanette opened up the envelope?

A That's right.

Q And you remember specifically it was five twenty-dollar bills, is that

correct?

A That's right.

Q Did you take the numbers down or anything?

A No.

Q Did you rewrite Captain Thompson's name on the envelope?

A No, sir.

Q Did he give you this openly or did he give it to you in the quietness of his office and ask you to keep it quiet?

(98) A No, he came in the office and Jeanette and I both were in the office, and he handed the envelope to me and said to call Herman and tell him to come by and pick up this envelope.

Q Did Mr. Partin frequently have conversations with the District Attorney's office and the Sheriff's office and other members of the law enforcement while you were out there?

A Yes, sir.

Q And that was a regular part of the business at the Teamsters' Union, wasn't it, to be in contact with law enforcement officers?

A I guess so.

Q Is there any particular way we could

pin down the specific date that Captain Thompson supposedly came down there and got this?

A Unless maybe you can check his records and see the days he was off the last part of February or the first part of March. Maybe he will remember when he went on the fishing trip.

Q It would have been during the week Monday through Friday, is that right?

A Yes, sir.

Q And he would have come to the place before five in casual clothes?

(99) A Yes, sir he did.

Q You think he was off duty and not working?

A No, I don't think he was working.

Q How did you eventually get in touch with Captain Thompson?

A We left word at the Sheriff's office for him to come by the Union Hall.

Q And you don't know how Captain Thompson came there or how he left?

A No, I don't.

Q You don't know the date that he came there or anything else?

A No, I don't.

Q And you were subpoenaed to testify

before the Federal Grand Jury to testify to Partin's misuse of union funds, were you not?

A Yes, sir.

Q You did testify in that connection, did you not?

A In the misuse of union funds?

Q That's right.

A Yes, sir, I did.

Q But you don't recall whether you told them about this incident, do you?

A No, I don't remember.

Q Is there any particular reason why you do not remember?

(100) A No, this has been over three years ago and I just can't remember everything in detail.

MR. KLEINPETER:

I tender the witness.

MR. VAN BUSKIRK:

No further questions. I ask that the witness be excused.

WITNESS EXCUSED

MR. VAN BUSKIRK:

Call Mr. St. Amant, please.

THE COURT:

Mr. Van Buskirk, do you have any further plans for this witness, or Mr. Kleinpeter?

MR. VAN BUSKIRK:

I have no objection to her being permanently excused at this point, Your Honor.

PHIL A. ST. AMANT,

the defendant, called as a witness in his own behalf, being previously sworn, testified as follows:

(101) DIRECT EXAMINATION

BY MR. VAN BUSKIRK:

Q You are the same Phil A. St. Amant who has been previously sworn on cross-examination and you are the defendant in this case?

A I am.

Q Mr. St. Amant, I hand you a document which has been marked D-1 for identification and ask you to examine it (indicating).

A (The witness complies.)

Q Do you recognize the document?

A I do.

Q What is it, please?

A This is a deposition of the testimony taken stenographically from the statements, in reply to my question, made by Mr. Albin and Mr. Albin swore to this and signed it in the presence of the press, and he had sworn to it previously in the presence of Mr. Golden Mills, Notary Public, who was acting at the time as my attorney, and in the presence of other witnesses and he re-signed it in the presence of the press, this particular copy.

Q And were you present when that was signed?

A I was.

(102) MR. VAN BUSKIRK:

If the Court please, in connection with the offer of this document, I would ask counsel for the plaintiff to join me in stipulating that the notarial signature of Golden Mills that appears on this affidavit is the signature of Golden Mills, the Notary Public in and for this parish.

MR. KLEINPETER:

I will stipulate Your Honor, that if Mr. Mills were called, he would testify that that was his signature and that he did notarize this affidavit. Now, I am not objecting to the affidavit as being that affidavit that Mr. St.Amant actually obtained from Mr. Albin.

MR. VAN BUSKIRK:

I apologize for misstating the stipulation. We stipulate merely that Mr. Mills would testify to that effect. I do not offer the affidavit for the proof of the statements contained therein.

MR. KLEINPETER:

Just that he did give it to Mr. St. Amant.

(103) MR. VAN BUSKIRK:

Just that it was in Mr. St. Amant's hands before---

MR.KLEINPETER:

And with that I have no objection.

MR. VAN BUSKIRK:

-- the offensive broadcast was made, and for that purpose I offer it as D-1 in evidence.

Q Mr. St. Amant, at the time this broadcast of June 28th was prepared, is it correct that the broadcast was first prepared for presentation as a film with a sound track?

A It was first prepared as a film.

Q And who were the participants in that film?

A Mr. Albin and I. I asked the

questions and he replied to my questions.

Q Now, that film was not broadcast, however?

A The film was not broadcast. The film was presented to the press and was intended to be broadcast, and at the last minute plans were changed.

Q Why were the plans changed?

A The interruption by the attorney for the station of an F.C.C. ruling that they would limit their responsibility if the properly filed candidate spoke the words rather than if a third party not a member of the (104) Senatorial race were speaking the words. Their wish was that it not be broadcast with Mr.Albin speaking the words but that I read his part as given on the film and in the document here.

Q And in order for you to read his part, how did you go about doing that?

A In the first place, when he spoke the words initially and they were filmed and put on the sound track, though, of course, he and I had discussed the material, all I had the notes on and I still have them right beside you (I can present them if necessary in my own handwriting)--were my questions, and he responded ad lib to my questions in making this sound track. Now, this was in preparation for the broadcast some

days before. When we made this sound track then by stenographic means this was transcribed from the sound track to be a copy of the-- of my questions and his replies. Out of this he made his affidavit, and this was then presented and when I presented it on the---in the form in which the audio-tape was heard by this Court, I was reading from the transcript substituting my voice from Mr. Albin's and substituting the comments "question-answer."

Q Now, do you have in your possession the original film which was intended to be broadcast before these plans were changed?

A I do have. I have two copies both made together and the processor marks one on the box that is marked "original" and the other one is a duplicate. To me I can't distinguish between them except by the markings on the box.

Q Is this film partially loaded on the projector, the original film?

A This is the original, yes (indicating).

MR. VAN BUSKIRK:

If the Court Please, I ask leave to show this sixteen millimeter sound film for the purpose of showing the source material for the actual statement

which the Court heard this morning, the actual broadcast of which the Court heard a transcription this morning, and I would ask to mark this film and file it in evidence as D-2.

MR. KLEINPETER:

I don't have any objection to it.

(At this time the film was shown to the Court, and the following is a transcription of the sound track which accompanied the film:)

(106) "Fellow Americans, this is Phil A. St. Amant, your conservative candidate for the United States Senate in the July 28th primary. I have a story to reveal tonight which is so unusual that I have bought this time on television to inform the public. This story involves a well-documented criminal, an ex-convict who became a labor chieftain. It involves misuse and theft of union funds, dealings with Communist officials of Cuba, a criminal conspiracy to destroy evidence and the destruction of that evidence, death resulting from the commission of a felony and a second death by a hit-and-run with a union car. Neither death has been prosecuted. It includes abuse by this labor chieftain of the members of his union, to include brutal beatings, forgery, a shooting of the labor chief, the struggle of working men to properly use the

provisions of the law to protect themselves, and their being thwarted by intervention of your junior United States Senator with no less than Jimmy Hoffa to give a good character and reputation for this criminal local chief, in order to protect his position while he continues to ride roughshod over American working men, and finally, just before justice can be done, a key witness who had given Grand Jury testimony died by a (107) most unlikely accident. Ladies and gentlemen, this is not my story, this is the story of working men who in their struggle for freedom from tyranny sought me out when they saw no other way to turn. This is the story of the little man against oppression and political influence. This is the story of politicis in Louisiana today. I give you the American working man.

Q Will you please tell us your name and occupation?

A J. D.Albin, unemployed since January 7th and ex-member of Teamsters' Local No. 5.

Q Mr. Albin, will you please tell us what you know about Mr. Ed Partin's trip to Cuba in November, 1960?

A Mr. Partin asked me on Monday morning some time late in November to take him to Moisant Airport in

New Orleans which I did. I saw him board the Cuba flight, the Havana flight for Cuba. Later in the day I received a phone call at my home from Partin. He asked me-- told me he had been in touch with the office and he asked me to find out why Otis Tynes had quit, that the office girl had told him that Otis had resigned that day, which I did. A. G. Klein (108) and myself then went to the hall late in the afternoon, reached Partin at the Plaza Hotel in Havana, Cuba, and relayed the message to him that he had asked for. The next day in the afternoon we went down to the Moisant Airport to pick Partin up. We saw him as he departed from the Havana flight with a coat over his arm. He went through customs, came out, he went to the automobile where he taken a package out, out of his coat from under his arm somewhere and put it in the back in the trunk of the car and we proceeded on back to Baton Rouge.

Q Anything you'd like to comment on Otis Tynes' explanation as to why he had quit the Union?

A Otis told me he had quit because he didn't want to be made the goat for Partin in the Louisiana Creamery contract. Ed had gave me a message that morning to, in the Louisiana Creamery contract and told me to take it back and tell Otis to go and renegotiate this contract. This

is a contract that was voted on by the members on November the 21st and accepted, a contract proposal from the company, which we felt at that time was a fair contract. This contract was (109) later renegotiated and signed, giving up many benefits, wages, boys working longer hours and was signed without the ratification of the membership.

Q Do you have any other indication of, ah, contract--well, ah, you said a moment ago that Partin did go to Cuba and you gave the indication of how you knew he was there. Did he tell you anything about his conversations there or whom he met with?

A He told us he met with Fidel Castro and Roual Castro, Fidel's brother. He said that Fidel spoke very broken English but his brother spoke much better English.

Q Did he indicate whose business he was on down there with the Castros?

A He told us when he left that he was going to Cuba to take of business for Jimmy Hoffa.

Q Did you see any other indications that he had contact with officials in Cuba?

A Yes. We later saw a letter that was written to Partin from Lopez, Ernesto Lopez of Cuba, and we taken this

letter and put it in the form of a handbill and put it out to the membership at the time.

(110) Q Do you know anything unusual about the handling of the union funds during this period?

A Yes. It was too numerous to relate here in the time allotted. He had used union funds for his own personal benefit, to pay house notes, he rented cars for his girl friend in---Mildred Kelly,in Childressville, Alabama. He would also take numerous amounts of money out of the cash drawer during the week and at the end of the week he made this up by making a check out to someone else who would endorse it and they would deposit it into the union fund.

Q Did you or any other members of the Teamsters' Union who were aware of this take any sort of action to correct it?

A Yes. Frank L. Doughty on March the 21st wrote a letter to Arthur Goldberg with a copy being sent to James R. Hoffa, asking for an investigation of Teamsters' Local Union No. 5. On the 25th, Frank L. Doughty received a reply from James R. Hoffa, asking for information, any and all information concerning these charges. On Monday morning, Frank L. Doughty, which was the 27th of March, he mailed

this information to Jimmy Hoffa. Later in the day, I found out he had had, on the letter coming from Hoffa, it (111) said on the bottom a notation "copy sent to Teamsters' Local Union No. 5." Now, Ed received this copy on a Monday. He became pretty riled up about it and in the afternoon, A.G. Klein, who was still working at that time as an assistant and an organizer for Ed at Teamsters' Local No. 5, told me that Johnny Birch had stopped him on the Airline Highway and told him Ed wanted him to help get rid of the safe that night, that there was going to be an investigation of the local union and the records had to be destroyed. It was going to take four men to do it. He told him who all was supposed to be in on it and that they were supposed to take it to Bruce Hunt's shop. That's the man that owns Triple "A" Construction and cut it open that night, that it had been okayed with Bruce. Klein didn't want to be involved in this, so he got his brother in New Orleans to send him a telegram so he could get out of it and still stay in Ed's good graces because at this time we still felt that it was further information that could be derived from his employment in Teamsters' Local No. 5 and we knew something had to be done if we were to ever straighten out the local union, (112) and the onliest way to straighten it

out was the removal of E. G. Partin. Now, we knew that this safe was gonna be removed that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson --from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police.

Q What did you do then?

A Well, we rode around a while trying to decide what to do. Finally, we decided that we would go to the Hall ourselves and see if there was any way we could stop them if we caught them coming out with the safe. We arrived a little too late. Somewhere in the neighborhood of nine o'clock the safe was gone. The next morning there was an investigation. Brother Herman Thompson came out and investigated it and I (113) understand that Lieutenant Joe Green showed up. They seemed to think it was a job by a professional. I agree with him.

Q Ah, this, ah, safe being gone, did

this destroy the evidence?

A No. Klein and myself had taken pictures of the check books previous to this and photostated other documents that we thought would help in the case..

Q Did the safe ever turn up?

A Yes. The safe turned up a few months later when a young man by the name of Forman drove off the river bridge and hitting his head on this safe and killing himself.

Q This sounds to me like a death that resulted from the commission of a felony. That's murder, isn't it?

A That's the way we feel about it, but so far, nothing's been done.

Q Now, after you sent this information to, ah, Hoffa, that had been photographed from the safe, did he take any kind of action?

A Yes. He sent a panel in here to hear Frank L. Doughty's charges. When they came in, they told him they had something like an hour or forty-five (114) minutes to hear these charges then and they had to catch a plane out of here, so Doughty knew that no one could hear these charges in that short a time, so he more or less got out of it and let it go at that time. At a later date, an auditor was sent in from the International to audit the

books, a Mr. Charlie Farrell. We felt this man was just and he found the books in terrible condition, in fact, he said a three year old child could run that local union better than Ed Partin was running it. He made his notations and comments back to the International Union and we felt at that time that something was fixing to happen. During this period then we found out from the office secretary that numerous telephone calls had been made to local politicians and two politicians in Washington. They were all supposed to meet in Washington to try to cement Ed's relations with James R. Hoffa.

Q Would you like to comment on the names of any of the politicians, ah, that were in Washington, who were called?

A Well, two that was supposed to be in Washington was Jimmy Morrison and Russell Long. They had (115) two or three from here. Ossie Brown, Apple Sanders (at the last minute for some reason or another decided not to make the trip, exactly why, I don't know).

Q Now, what happened, as a result of these telephone calls?

A Well, nothing was done after they, after that, so we figured that these people must have intervened. Now, at a later date, Klein and I then filed charges through the local union, through the local union

executive board, got up a petition with something a little over three hundred names on it and we made a trip to Washington to see Jimmy Hoffa.

Q Who else went with you?

A A. G. Klein,myself, Prentiss Moak and A. D. Burris.

Q Did you get to see Mr. Hoffa?

A Yes. We saw Hoffa late that afternoon. We presented the petition to him and told him our story. He said it was hard for him to understand this about Brother Partin. He said that nice young Senator from down there, Brother--Senator Russell Long, that he was in my office and he praised Brother Hoffa to the highest and his standing in the community as being very good. (116) He said "I---I don't understand this." We told him how we felt that Brother Partin had his political pull was through unscrupulous employees that he was selling his membership out so he promised to send somebody in here to investigate it and do something about it, which, ah, didn't happen.

Q What did you men do then, when you returned to Baton Rouge?

A We came back to Baton Rouge, we contacted, ah, the parties involved. Some of them we didn't even get an

answer from. We did get an answer from Russell Long. We asked, we told Russell what in the telegram that we sent him, what Jimmy Hoffa had told us. We also told him that having positive proof of his (of Partin's) dealings with Fidel Castro and the Communist regime in Cuba, that we felt it would be to his interest and ours if he would cease, ah, supporting E.G. Partin.We received a telegram from Russell Long which I have here and I will read the contents, "Your information concerning E. G. Partin and James R. Hoffa is completely erroneous. I have never met James Hoffs personally and I have not undertaken to give him (117) any estimate of the standing of Mr. Partin or any of his officers. Neither Hoffa, Partin nor anyone else have asked me to express my opinion in a matter of this sort. (Signed)Russell Long." Klein and I contacted Russell Long a little later on the telphone. He was not the distinguished speaker on that telephone, he was pretty well shook. He finally admitted that he had talked to Brother Hoffa for Ed Partin but only as he would do any other employee for their employer, go to any other employer for an employee. What he didn't understand was this, that Ed Partin is not an employee of James R. Hoffa, he is employed by the members of Teamsters' Local Union No. 5 for their benefit.

Q Ah, do you know anything else about

Mr. Partin's background and public record?

A Yes. Ah, I have what is known as a rap sheet here on Brother Partin. Ah, just a few of 'em, ah, here is one in Roseburg, Oregon, robbery and auto theft, and was released at the Cisco County, California---there's about eighteen of 'em here. Another one here in Vancouver, Washington, investigated breaking and entering and left pending. Another one in Monroe, Washington, second (118). degree burglary from Clark County, seems like about fifteen years. I don't know how much he served and then you've got one here I understand was a colored girl up in Woodville, Mississippi, raped and robbed with firearms.

Q Have you heard anything recently on trouble he had in Cuba, Alabama?

A Yes. Ah, but before I mention this, I would like to go back a little bit to a recent hearing that we had here where some fifteen or twenty people jumped A.G. Klein and myself at the local union hall. We were told before we went into the hearing by one of the members, Emmett Tucker, that we were gonna get worked over as soon as we came out of that hall, so during the process of the hearing, I approached Mr. Charles Winters, Secretary-Treasurer, Joint Council 93 and Business Manager of Local Union 270, New Orleans, and told him

what had been said, so he told us that something would be done about it and there would be protection outside the hall when we left, and I don't mind telling you when I stepped out of that hall and saw Lieutenant Joe Green standing out there with a riot gun I had cold chills running up and down my spine. I (119) wasn't so much worried about those fifteen or twenty members that jumped us, I was worried about Joe Green, and I would like to say at this time that he made no attempt to help relieve the situation that was going on. Now, you mentioned another thing here, this Cuba, Alabama, deal --December the 25th of 1961. Partin was involved in a hit-and-run auto accident in Cuba, Alabama, killing a young solider, an Air Force boy. There was three of 'em in the car, two of 'em were injured and this boy was killed.

Q How did this come to your attention?

A It came to our attention through some more of Mr. Partin's meddling with, ah, one of his member's family troubles, where two of the children at this time that he --he got 'em hid off somewhere-- for this boy-- he's in jail, and, ah, his wife has been trying to find the children for something like two months, and they were witnesses to this thing that had taken place in Cuba, Alabama.

Q And has prosecution occurred

as a result----

A No---

Q --of this accident?

(120) A No. There was found upon, immediately upon return to Baton Rouge that, ah, Partin got in touch with Lieutenant Joe Green again, and, ah, it was cover up from the word go, even to the extent of having a union car repaired at Lutcher, Louisiana, in Bruce Hunt's name.

Q Can you tell us why Mr. Klein is not here testifying today?

A Mr. Klein met with an accident at St.Francisville, Louisiana, where a truck had dropped on top of him loaded with about ninety thousand pounds of sand. This happened just a short while after he had testified in front of the Federal Grand Jury in New Orleans, and it's to my sorrow that I lost one of the, one of my closest and dearest friends, and----

Q I believe Mr. Klein was a family man, wasn't he?

A He sure was. He had five children, the youngest one about a year old, a year and a half old, and the oldest one about ten years old.

Q Was this the sort of an accident you would expect for an experienced

Teamster to become involved in?

A Well, no, I wouldn't.

Q As a working man, what is your reaction to Mr. (121) Long's intervention in an affair of this sort?

A It is very much unappreciated. We feel like that this was, that he was meddling with the working men's affairs in this local union.

And so, ladies and gentlemen, you have heard here a true story of the ordinary little man, why he has no protection under our laws, political influence for notorious criminals. I want a public statement by Mr. Long on why he felt justified in giving a good character to Mr. Partin and then lying about it. I demand that he tell us of any other deals and influence he may have with Jimmy Hoffa. I demand that he explain his philosophy to the public on voting against the rights of the working man to have a secret ballot to determine union funds expenditures and recall of union officers. I believe that you, the people, should ask him these questions. You have a right to know. This is Phil A. St.Amant, your conservative candidate for the United States Senate. Thank you! (End of Film)

Q Mr. St.Amant, the film we have just seen is the film concerning which you have previously testified and from which the transcript for your television broadcast was prepared?

A It is.

(122) MR. VAN BUSKIRK:

If the Court Please, I offer, produce and file it in evidence and ask that it be numbered D-2, the sixteen millimeter sound film concerning which the witness has just testified which has just been shown.

MR. KLEINPETER:

Your Honor, I object to the film for one reason only. I object to it insofar as it pertains to any testimony given by Mr. J.D. Albin as to the truth or falsity of it either way, and insofar as it being any film he made for that purpose and to give the background of it, I have no objection. I am not objecting or saying that what he said was correct.

MR. VAN BUSKIRK:

It is not offered for the purpose of the truth of the contents and to that extent---

THE COURT:

I understand. Let's go on.

MR. VAN BUSKIRK:

I tender the witness.

(123) CROSS-EXAMINATION

BY MR. KLEINPETER:

Q Mr. St. Amant, as a candidate for public office you prepared this film or paid to have it prepared, is that correct?

A I did.

Q And then you presented it to WAFB Television Studio, is that right, sir?

A It was prepared to the studio of WAFB-TV.

Q Then they refused to let you run this film as it was prepared, is that correct?

A They had agreed at the time we made it that it would be run. This was the whole purpose of making it and they had the thing done and returned it, but their attorney suggested that it would be unwise, not in any connection with Mr. Thompson. I don't think that anybody ever thought Mr. Thompson had anything to do with it, I think they were thinking about some other people about whom some meaner things were said there, that some trouble might be caused the station and it was their best advice that they would rather that the station would have the protection if I spoke all the

words because I was a candidate, and under the F.C.C. rules the station could not be (124) attacked for the words that I spoke. Perhaps the station could be attacked and have to defend themselves for the words spoken by a third party, and they asked me to retape the thing instead and I did so.

Q In fact, they specifically instructed you that under Section 315 or under the F.C.C. regulations as a candidate for public office you were entitled at the time as a candidate and that you could recite these words but they didn't want anybody else because it might subject them to a lawsuit, is that correct?

A It might subject them to legal action, that's right.

Q And in spite of that, you went ahead and repeated what Mr. Albin had said on this film on your television program, is that correct?

A I certainly did.

Q And then you had the same reduced to writing and you circulated it to the newspapers and other news media, is that correct?

A I did. I circulated it at the press conference when this film was shown before the broadcast that night.

Q Mr.St.Amant, I noticed in observing you during the time we were running this film that you smiled on numerous occasions during the presentation of this film. Do you get a lot of enjoyment out of watching (125) this, sir?

A I enjoy a political campaign. I felt that this made certain points. I know that it did make certain points because I got a certain amount of vote and response and support from certain working people, certain groups of people, and I do enjoy combat of this sort and this is what a political campaign is. I certainly do. I never ran away from a fight and I felt that this was my presentation of what's going wrong around here and I thought I had better tell the voters about it. Looks like nobody else has the courage to tell them around here. Everybody is scared somebody is going to sue them. I told them the truth and I can stand on this truth and I can, as we did, back this up with other witnesses. Basically speaking, this is a true story.

Q And that goes for all employees as well as the public officials, is that correct?

A There wasn't any employees involved. Which employees are you speaking of now, employees of what?

Q Employees of the Sheriff's office

and the State Police and all the other law enforcement officers---

A There were no aspersions cast upon these people.

Q Well, you referred a while ago in response to my question that there were other people about whom (126) meaner things were said?

A Yes, there were. There was a contractor there that could have objected to saying that he had given permission to cut a safe open in his office, but he did not, and I believe the time in which he would normally have made such an objection has expired. There were certain other people that could have required proof of these things in court. I was prepared to go as far as was necessary because I had the statements and testimony of people who knew about these things.

Q Do you have any personal knowledge whatsoever of any improper activities whatsoever of Captain Herman Thompson?

A I have no personal knowledge of it nor did I impute it, nor did I intend to.

MR. KLEINPETER:

I tender the witness.

MR. VAN BUSKIRK:

That's all.

WITNESS EXCUSED.

(127) MR. VAN BUSKIRK:

Defense rests, Your Honor. I have nothing further to offer, Your Honor.

MR. KLEINPETER:

I would like to call Captain Herman Thompson back on rebuttal.

HERMAN A. THOMPSON,

the plaintiff, recalled as a witness in his own behalf, as a rebuttal witness, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEINPETER:

Q Captain Thompson, did you see this lady, Mrs. Marjorie Ann Smith, when she was on the stand?

A I did, sir.

Q Did you know her, sir?

A I knew her. I always heard them call her "Ann." That's all I knew.

Q Where did you know her, sir?

A She worked at the Teamsters' Hall.

Q Has she at any time ever given you

an envelope with any money or anything else in it?

(184) A She has not.

Q During the month of February and March of 1961, what were your regular days off?

A Sundays, and I slipped off on Saturday afternoons every once in a while if things weren't busy. I was the Chief of Detectives.

Q Now, sir, have you checked the logs for the month of February and March of 1961?

A I have. I checked it from the 9th of February through the 14th of March and I worked every day and it is shown on the logs and the radio with the exception of Sundays which I had off.

Q Are these the logs that you refer to (indicating)?

A These are the official logs of the Sheriff's office.

Q You were not off a day during that time except on Sunday?

A That's right, sir.

Q To your knowledge, did you ever call at that office dressed in casual clothes during the week or any other time?

A No.

Q What's that?

A No.

Q Now, at any time to date were any contributions made to the Kids' Clinic or anything, placed in an envelope (129) or anything?

A I have once or twice picked up --- I think it was in an envelope. I don't know if it was when Mrs. Bourque was working there or this other lady Mrs. Smith. Once or twice there has been an envelope but I never opened it. I would bring it in and give it to Polly.

Q Who is Polly?

A Mrs. Coxe, the Sheriff's secretary.

Q And what is her rank?

A She is a captain now. She is the Sheriff's executive secretary and she handles all those things when I bring them in.

Q At any time did Ed Partin or any member of any union in Baton Rouge give you any money for any purpose other than to be transported in for a civic purpose?

A No.

MR. KLEINPETER:

I tender the witness.

CROSS-EXAMINATION

BY MR. VAN BUSKIRK:

Q As I understand your testimony, Captain, you had never picked up an envelope of any kind from Mrs. Ann (130) Smith out there at the Union Hall?

A I did not. I said it may have been on occasion in an envelope but if it was, I did not open it. I would bring it right in and give it to Mrs. Coxe who is the Sheriff's executive secretary.

Q But you are not denying that you have picked up an envelope like that out at the Teamsters' Hall and brought it in and given it to the Sheriff's secretary?

A If I had, it would have been before February because I think the solicitation for that is in January and the clinic is generally in February.

BY THE COURT:

Q What is that, the Baseball Clinic?

A Yes, sir, when the baseball players come in. We make the drive before they come in.

Q Do you know or have any knowledge of

when that clinic is held?

A It is at a different time every year, Judge, but if I am not mistaken, I think it is always in February. They have it and then leave here and go to the training camp.

MR. VAN BUSKIRK:

I have got nothing further.

(131) MR. KLEINPETER:

You can step down.

WITNESS EXCUSED.

MR. KLEINPETER:

That's all, Your Honor.

TESTIMONY CLOSED

(Filed: June 16, 1965)

...oOo...

REASONS FOR JUDGMENT
(Number and title omitted)

The law with reference to libel and slander is that any publication, whether in writing, on television, radio, or in pictures or otherwise, which exposes any person to hatred, contempt, ridicule or which causes him to be shunned or which has a tendency to injure him in his reputation or occupation

is a libelous statement. That has been our law and was recently stated in the case of Miller, Smith & Champagne, et al v. Capital City Press, 142 So.2d 462, but that is a hornbook law definition of libel and slander. The foundation of the law of libel and slander is the protection of a person's reputation, and as stated in Kennedy v. Item Co. 213 La. 347, 34 So.2d 886, the right to a good name and fame is absolute and is as essential to the pursuit of happiness as is the right to life, liberty and property.

The test of whether a statement is libelous is set forth in Madison v. Bolton, 234 La. 97, 102 So.2d 433, that the test of a libelous article is the effect the article is fairly calculated to produce, the impression it would naturally engender in the minds of the average persons among whom it is intended to circulate. As has been pointed out here, some statements are privileged when they involve public officials, and I believe the law stated by Mr. Van Buskirk with regard to its application to public officials was correct. Public officials are fair game, so to speak, but statements with regard to them are only actionable as being libelous when it can be shown that the maker of such a statement acted with malice, and that must be particularly alleged and proved.

The case of Smith v. Lyons, 142 La. 975, 77 So.896, with regard to the question of damages, and others there

cited, are to the effect that when one falsely accuses any person of being dishonest, a liar, being fraudulent, or of having unworthy motives, or to impute the same by insinuations or innuendo, such action renders the individual publishing the same responsible for the consequences. In such instances the law implies malice and will award substantial damages without the showing of any special damages. Of course, a defense to any such libelous statement would be the truth. It is not libelous to make statements about another person or accuse him of being dishonest or accuse him of having unworthy motives which reflect on his character if they are true, but the one who makes such statements also has the burden of proving the truthfulness of the same.

I have gone over the statement again, the statement made by Mr. J.D.Albin in his affidavit and repeated by Mr. St. Amant in his speech on WAFB-TV as follows: "We knew something had to be done if we were to ever straighten out the local union, and the onliest way to straighten it out was the removal of E.G. Partin." Prior to this statement, many statements had been made in the speech with reference to Mr. Ed Partin, business agent of the Teamsters Union, accusing him of such things as trafficking with the Castros in Cuba, being a criminal, in fact, referring to his rap sheet and criminal convictions, and also Mr. St.Amant in his speech and through Albin's affidavit painted Partin as

abusive of these particular members in the union, abusive of the membership in the union, mishandling union funds, commiting murder, and possibly other dishonest motives and acts which escape my memory. However, considering the whole tenor of the speech, I got the idea that Mr. Partin was a crook of the highest order. Following these remarks quoted by Mr. St.Amant, Mr. Albin stated that certain efforts were made by them to get help or relief from Mr. Partin, and they had gone to Washington to ask James Hoffa to aid them, and as a result of their efforts Mr. Partin had good reason to expect that an investigation of the union was imminent. The affidavit further reflects that they had received knowledge that Mr. Partin was going to remove the safe from the union hall, and as a person of average intelligence, I would draw the inference that Mr. Partin would only do this in order to hide any wrongdoing on his part with regard to his handling of union funds or otherwise, and he therefore had to get rid of the safe. The affidavit goes on to show how they had thought about what action they could take to prevent this, and it occurred to them that perhaps they should call the law, but that they were afraid to call the law, especially the Sheriff's office, because they knew of Captain Thompson's connections with Ed Partin, that they had known that money had passed hands, and the inference that I got was that this statement tended to impute some dishonest motive to Captain Thompson such as taking a payoff from Ed Partin. It also insinuated and inferred that he, Thompson, rather

than do his duty and enforce the law or help them prevent the commission of a crime might aid and abet the wrongdoer Mr. Ed Partin since Partin had connections with Thompson. The statement did not infer, it charged that they should not go to him because if they did they would not get any help and did not know how far he was involved in the Sheriff's office or State Police office. There is no doubt in my mind that a person of average intelligence hearing that speech would figure that Captain Herman Thompson was in cahoots with Ed Partin, especially after all of these other dishonest motives and accusations made as to Mr. Ed Partin that previously thereto and _____linking Mr. Thompson's name in the fashion stated, he couldn't help but imply to the average person that Captain Thompson was involved with Partin in a dishonest way.

I heard from Mr. St. Amant today that he intended no malice toward Captain Thompson. He was in a political fight with Senator Russell Long, that it was true that money had passed between Ed Partin and Captain Thompson, and that he had also been out at the Union Hall, and that Partin and Thompson addressed each other by their first names. All of this was also admitted by the plaintiff. Plaintiff has stated that he had plenty of business at the Union Hall, but the same was in connection with burglaries of union activities involving strikes which made it necessary for him to confer with Mr. Partin from time to time. Mrs. Smith, Mr. Partin's secretary stated that money was left in an

envelope from Mr. Partin to Mr. Thompson and that he picked up the same. The Sheriff testified and so did Mr. Thompson that any money that he received from Mr. Partin was purely in connection with drives put on by some charitable institution such as the Baseball Clinic, Elks Club or other charitable drives, and that any money that he ever received from him was soley for that purpose and was turned over to the Sheriff's receptionist who would account for the same.

Even though Mr. St. Amant states that he did not intend to impute any dishonest motives to Mr. Thompson and did not intend to injure or hurt him in his reputation, nevertheless, the fair inference to be drawn by what was stated to the average person had that exact effect.

Having already held that the statement itself inferred and attributed to Mr. Thompson dishonesty, such statements are under our law injurious per se unless the truth of the accusation is proved. The only proof that this Court has is the fact that the money did pass, which was freely admitted by the plaintiff, and that is not sufficient evidence to attach any dishonest motive to Captain Thompson in view of the other testimony by him and as well as possibly the admissions of the defendant himself that he intended to attribute no dishonest motive to him, but nevertheless, that mere

fact of receiving that money is not proof of dishonesty on his part. It is not proof of his taking a payoff, nor proof that because of his connections with Partin he would not do his duty as a law officer. Proof of those charges, which are implicit in the language of the statement, would be his only defense under our law (TORN COPY).

I know of nothing more important to a police officer, or for that matter to any man, than his reputation. I know it is more important than money. The natural experiences of life teaches that regardless of a man's wealth it never takes the place of his good reputation and character. It is especially so of police officers, for there is nothing as vile to our system of justice as the belief that our police are dishonest. They are to enforce the law, and their professional reputation depends a great deal on their honesty and integrity. Of course, it is hard to show how far such a statement has injured Captain Thompson. Captain Thompson, as far as the Court knows and from listening to the Sheriff and others, has a fine reputation, but the statement was circulated all over the parish to many, many persons who have no knowledge of Captain Thompson, and as Shakespeare said, "The bad that men do lives after them and the good is oft interred with their bones." The public will often not remember good things about people but remembers the bad things that have been said about them, and it is not unreasonable to assume that if Captain Thompson's

name is discussed among the general public that it could be associated with taking some paypff from Ed Partin, the Teamsters agent, and that these union members were afraid to go to the police because they knew of Ed Partin's and Captain Thompson's connection. They will remember that long after they have forgotten how much education he has as a law officer, long after they have forgotten that he was a graduate of the F.B.I. School. Long after his many faithful years of service in the Sheriff's office, they will remember that.

It is my opinion that to have made a speech outlining in detail and charging Ed Partin with such great criminal activity and then to link Partin and Captain Thompson together with a statement that money had passed hands betweeen them is a statement which is libelous per se. I was interested in Mr. Van Buskirk's remarks that they were not and the reasons why they were not, but I wonder, Mr. Van Buskirk, what you would think if someone could reflect on your honesty as a lawyer in such a publication. You could have been a good lawyer, which you are, for years, and yet you would be put up to public ridicule and contempt, and damage would result not only to your reputation but indeed to your business, and if the same were not true and if the defendant could not prove it is true, I know that you should feel that you were damaged.

I was looking at the case of

Deshotel v. Thistlethwaite, 240 La. 12, 121 So. 2d 222. I don't know what would be the more injurious to reputation, I don't know whether it would be more injurious to be referred to as a coward or whether it would be more injurious to be referred to as a thief or a dishonest officer of the law.

On that point and with regard to what you stated about Section 315 of the Federal Communications Act, it is my opinion that that act does not apply to Captain Thompson because I do not believe him to be a public official, though I know he is a public employee, like Mrs. Dobbs, my clerk, and countless others that we have enforcing the law, but I do not think that was intended to apply to other than public officials. If I am wrong about that, you will have to straighten me out, because if he is a public officer, so to speak, then the rules may be entirely different.

While not in evidence and having nothing to do with the case, while I was listening to the testimony, I have remembered that I had run out of money and needed some and had borrowed some money from a lawyer who had a case in my court. I gave it no thought, we were and had been friends, just as I am and have been with practically every member of the bar. I was just thinking to myself how that would look out in print or on T.V. I don't know whether the lawyer won or lost his case.

I can't recall it, but I remember that I was out of money and rather than cash a check, I got it from him. I have no idea whether he won or lost the case or what case it may have been, but I sure realize the impropriety of it and what it could have done to me. I certainly had no dishonest motive. I just forgot to cash a check and borrowed money from a friend, which all of you lawyers are to me, and I can see right now that if somebody got on T.V. and put it out that money had passed between me and the lawyer and he had won the case, I really would have been in a fix. The more I would have tried to explain it, the worse it would have gotten.

Mr. Thompson states he gets money for a contribution to a charity, and, of course, to those people there money was passing hands between him and Ed Partin. Yet, I know unions, management and everybody else contributes to those drives. Dishonest motives can be attributed to an entirely innocent act. I will tell you one thing, from now on, if I run out of money, I am going to borrow money from the bank or go find a place to cash a check or do without.

This brings up the amount of the award, and that is the hardest thing about being a judge, to determine what is a fair award. If I am not mistaken, where the damages are libelous per se and are of such a nature as to injure and degrade the character of a person, malice is inferred. While the damages

are not punitive, the Court can only in its discretion make an award which I believe may at the best be arbitrary. Like I said before, I don't know who is talking about Captain Herman Thompson and believes he and Ed Partin are crooks together, and there is no way of knowing, except to say that if you are a lawyer and you get written up as being dishonest or you are a policeman and the inference from the remarks made is that you are not honest or would engage in some conspiracy, you just cannot recover from that without some damage, because I believe people remember bad things about you for a long, long time. Also, I don't know, it is not in evidence, and I only know this by hearsay, but I don't know what Mr. St. Amant makes. I know he is a retired Army officer. You have to balance that also against Captain Thompson and the damage to his reputation. I don't think that he has been harmed insofar as any monetary loss is concerned. His employers think as much of him today as they did at the date of this speech. He has lost no money. If I was fooling with WAFB-TV or with the Item Publishing Company, as in the Kennedy case and others, the award would be considerably higher than I am going to give.

I fix the award in favor of Captain Thompson and against Mr. St. Amant at the sum of $5,000.00.

Mr. Van Buskirk, we will furnish you with all of my remarks made in court today, and I will hold Mr. Kleinpeter off, and I know that he will do

so voluntarily, from getting the judgment signed until you can examine them, and if you have any other argument that you wish to make and have found me incorrect in the law in any way, then you will have that opportunity.

I will sign a judgment accordingly in favor of plaintiff as stated.

Baton Rouge, Louisiana, this 8th day of May, 1964.

s/ Fred A. Blanche, Jr.
JUDGE, 19th JUDICIAL DISTRICT COURT

(FILED: May 8, 1964.)

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JUDGMENT

(Number and title omitted)

This cause came up for hearing on Tuesday, May 5, 1964 pursuant to regular assignment. PRESENT: Robert L. Kleinpeter, of the firm of Kantrow, Spaht & Kleinpeter, Attorneys for the plaintiff; and, Mr. R. G. Van Buskirk, Attorney for the defendant.

When after reading the pleadings, hearing the evidence, considering the memorandums and authorities submitted by counsel, together with oral argument, and for oral reasons assigned, the law and evidence being in favor thereof;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the plaintiff, Herman A. Thompson,

and against the defendant, Phil A.St. Amant, in the full and true sum of Five Thousand and No/100 ($5,000.00) Dollars, together with interest thereon at the legal rate from date of judicial demand until paid and all cost of Court.

JUDGMENT RENDERED in Open Court on the 5th day of May, 1964.

JUDGMENT READ AND SIGNED in Open Court on the 13th day of May, 1964.

s/ Fred A. Blanche, Jr.
JUDGE, Nineteenth Judicial
District Court

(FILED: May 13, 1964)

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MOTION FOR A NEW TRIAL

(Number and title omitted)

Now comes Phil A. St. Amant, defendant herein, through his undersigned counsel, and moves the court to set aside the judgment rendered herein and signed on May , 1964, and to grant a new trial or, in the alternative, a partial new trial to permit a re-argument of the case, on the ground that

1) the said judgment is clearly contrary to the law and the evidence,

2) the interests of justice require that a new trial or a partial

new trial be granted,

All as will be more fully shown by briefs to be filed and served on counsel for the plaintiff prior to the argument of this motion.

BY ATTORNEY:

s/ R.G.Van Buskirk
R. G. VAN BUSKIRK
P.O. BOX 428
CLINTON, LOUISIANA

(FILED: May 18, 1964)

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REASONS FOR JUDGMENT

(Number and title omitted)

The Court rendered oral reasons for judgment in favor of the plaintiff in the sum of $5,000.00 on a finding that defendant had libeled plaintiff in a political address which was subsequently printed and distributed by the defendant. The Court has no misgivings about its decision that the remarks made by defendant were libelous but has entertained the motion for a new trial to consider the case in the light of the holding by the United States Supreme Court in the case of New York Times Company v. Sullivan, 84 S.Ct. 710 (1964). That case held that:

"The constitutional guarantees require, we think, a federal rule that prohibits a public official

> from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'--that is, with knowledge that it was... false or with reckless disregard of whether it was false or not."

Therefore, in light of the above quoted case, an inquiry into (1) whether or not the plaintiff is a public official and (2) whether the statement made by defendant was made with "actual malice"--- that is, with knowledge that it was false or with disregard of whether it was false or not is pertinent to a decision in this case.

The case of State v. Mayeux, 81 So. 2d 426, had considered the status of a deputy Sheriff such as the plaintiff Captain Thompson:

> "A deputy sheriff is a state officer created by the Legislature and his appointment is provided for in LSA-R.S. 33:1433. Williams v. Guerre, 182 La. 745, 162 So. 609, and the authorities cited therein."

In Gray v. De Bretton, 188 So. 722, 724 (1939), further reference to a deputy sheriff as a public officer is made in the following language:

> "The relation between a sheriff and his deputy is an official

> and not a private relation. The deputy is not a representative of the sheriff in his individual capacity, but he is a public officer whose authority and duty are regulated by law. As to the public, whose servants these officers are, the acts and omissions of a deputy sheriff are the acts and omissions of the sheriff himself." (Emphasis added)

Further evidence that he is a public officer is found in the fact that Article 19, Section 1, of the Constitution of 1921 provides that "All officers. . . shall take the following oath or affirmation. . .," and R.S. 33:1433 under the title of "Public Officers" provides for the office of deputy sheriff and requires the taking of the oath and for the filing of a bond.

Having found plaintiff to be a public officer, the rule enunciated in New York Times Company v. Sullivan, supra, is applicable, namely, that malice may not be implied in the case of a public official (officer) and that actual malice must be shown, that is, with knowledge that it (the statement) was false or "with disregard of whether it was false or not."

Previously, the Court in its oral decision from the bench applied the Louisiana law which was just recently stated in the case of Lamartiniere v. Daigrepont, 168 So.2d 373 (October 27, 1964), La. App. 3rd Cir.:

> ". . . the defendant states, as a witness, that he entertained neither malice nor ill will against the plaintiff at the time it was uttered; yet, in such case, the law imputes malice to the act, on account of its character, for the use of opporbrious epithets implies malice when they are slanderous per se. It suffices to maintain an action to recover damages without proving special injury to the party defamed."

Thus, the Court's decision cannot stand on the basis that malice may be implied by the mere character of the statement in light of its holding that plaintiff is a public official, and that brings us to the final question of whether under the federal rule as enunciated in New York Times Company v. Sullivan (supra) the plaintiff has shown actual malice.

Mr. St. Amant stated that he intended no malice toward Captain Thompson, that he was in a political fight with Senator Russell Long and had no interest in Captain Thompson. In reply to a question by plaintiff's counsel as to whether he gave any consideration to what effect the statement in the affidavit of Mr. Albin would have on Captain Thompson, he replied that Captain Thompson was not even in his mind. He further testified that he did not consider that Captain Thompson would be harmed by the statement and that he did not know what the money was for and that for all he knew the same could have been for Thompson's favorite

charity. Finally, he admitted that as far as he was concerned he would let the public draw whatever inference it liked with regard to his reference to Captain Thompson.

Therefore, if Mr. St. Amant did not even know Captain Thompson or have any interest in him, and if he did not know what the money was for, which is evidence that he made no attempt to investigate whether there was any relationship between Mr. Partin and Captain Thompson, to justify his charge that Captain Thompson was being paid off, and if he never gave any consideration as to what effect those remarks might have on Captain Thompson's reputation and character and was content to let the public draw whatever inference it desired concerning these remarks, then fairness dictates that despite defendant's avowed absence of ill will toward Captain Thompson or intent to do him harm or damage, he acted with reckless and wanton disregard for whether the statement was false or not and in the language of the Sullivan case "with disregard of whether it (the statement) was false or not."

The Court is satisfied that its original opinion was correct, and for the reasons here stated the motion for a new trial is denied and judgment will be signed in favor of the plaintiff as originally rendered herein.

Baton Rouge, Louisiana, this 22nd

day of January, 1965.

s/ Fred A.Blanche, Jr.
JUDGE, 19TH JUDICIAL DISTRICT COURT

(FILED: January 22, 1965)

...o0o...

JUDGMENT

(Number and title omitted)

This cause came up for hearing upon a motion for a new trial filed herein by the defendant praying that the judgment signed herein on May 13, 1964 be set aside and that a new trial be granted. When, after reading the pleadings, the written memorandum for plaintiff and defendant, and for written reasons assigned, the law and evidence being in favor thereof:

IT IS ORDERED, ADJUDGED AND DECREED that the motion for a new trial filed on behalf of the defendant be denied and that the judgment signed herein on May 13, 1964 be and it is hereby made the judgment of this Court as originally rendered.

JUDGMENT RENDERED in Open Court on the 22nd day of January, 1965.

JUDGMENT READ AND SIGNED in Open Court on the 27th day of January, 1965.

s/ Fred A.Blanche, Jr.
JUDGE, 19th Judicial District Court

(FILED: January 27, 1965.)

...o0o...

OPINION AND JUDGMENT

COURT OF APPEAL

FIRST CIRCUIT

STATE OF LOUISIANA

HERMAN A. THOMPSON

NUMBER 6571

VS.

PHIL A. ST. AMANT

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT, WITHIN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, HONORABLE FRED A. BLANCHE, JR., JUDGE PRESIDING.

Before ELLIS, LOTTINGER, LANDRY, REID, and BAILES, JJ.

REID, J.

Plaintiff in this action, Captain Herman A. Thomspon of the East Baton Rouge Parish Sheriff's Department, alleges he was libeled and slandered by the defendant, Phil A. St. Amant, in a television address made by the defendant and a subsequent printed news release prepared by the defendant.

The case was tried on May 5, 1964 and for written reasons assigned May 8, 1964, judgment was rendered against

the defendant awarding the plaintiff the sum of $5,000 damages. Judgment was signed May 13, 1964. A motion for a new trial was filed May 18, 1964, and for written reasons assigned January 22, 1965, judgment was signed January 27, 1965 denying the motion for new trial and decreeing the judgment of May 13, 1964 the judgment of the District Court as originally rendered. It is from that judgment that defendant has lodged this appeal.

The undisputed facts of this case show that the defendant, Phil A. St. Amant, had qualified as a candidate for United States Senator against the incumbent, Senator Russell B. Long, in the Democratic Primary of 1962, and on June 27, 1962, the defendant made an appearance on WAFB-TV, Channel 9, Baton Rouge, Louisiana, during which certain remarks were made about the plaintiff. The general context of the speech was made available to the press and given wide publicity by the press.

The record shows that the political method used in this particular instance was one so frequently used, that is, to allege certain wrongdoings on the part of one individual or group of individuals and then allege a connection between that individual or group of individuals and a politician. In the present case it was sought to show a connection between Senator Long and one E. G. Partin, local leader of the Teamsters Union who was accused of all sorts of wrongdoings.

Insofar as the record here is concerned, the alleged slanderous and libelous material is contained in an affidavit by a Mr. J.D. Albin, an ex-member of the Teamsters Union, which was read by the defendant Mr. St. Amant during his television program. It appears that while the television station would be protected from statements made by Mr. St. Amant as a political candidate under the equal time provision of the Rules of the Federal Communications Commission, it would not be protected from statements made by Mr. Albin if those statements were made by St. Amant over the television. For that reason the television station personnel required that the defendant read the entire affidavit, which was in the form of questions and answers. The affidavit by Mr. Albin was most broad in its accusations of various acts of commission and omissions on the part of Mr. E. G. Partin, including his being involved or connected with Fidel and Raoul Castro, his misuse of Union funds, and his commiting various acts of violence. It barely mentioned Mr. St. Amant's opponent. That portion of the affidavit which plaintiff contends was slanderous is set forth below:

"Mr. Albin:

> Yes, Frank L. Doughty on March 21st, wrote a letter to Arthur Goldberg with a copy being sent to James R. Hoffa, asking for an investigation of Teamsters Local Union #5. On the 25th, Frank L.

Doughty received a reply from James R. Hoffa asking for information, any and all information concerning these charges. On Monday morning, Frank L. Doughty, which was the 27th of March, he mailed this information to Jimmy Hoffa. Later in the day, I found out Ed had, in the letter coming from Hoffa, it said on the bottom of it a notation, copies sent to Teamsters Local Union #5. Now Ed received this copy on Monday. He became pretty riled up about it and in the afternoon, A.G. Kline, who was still working at that time as an assistant and an organizer for Local Teamsters Union #5, told me that Johnny Birch had stopped him on the Airline Highway and told him Ed wanted him to help him get rid of the safe that night, that there was going to be an investigation of the local union and the records had to be destroyed and it was going to take four men to do it. He told him who all was supposed to be in on it and that they were supposed to take it to Bruce Hunt's shop. That is the man that owns Triple A construction, and cut it open that night, that it had been okayed with Bruce. Kline didn't want to be involved in this so he got his brother in New Orleans to send him a telegram so he could get out and still stay in Ed's good graces, because at this time, we still felt that there was further information that

could be derived from his employment in Teamsters #5 and we knew something had to be done if we were ever to straighten out the local union. The only way to straighten it out was the removal of E.G. Partin. Now we knew that this safe was going to be removed that night. Imagine our predicament knowing of Ed's connection with the sheriff's office through Herman Thompson who made recent visits to the hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson, from Ed to Herman. We also knew of his connections with State Lieutenant Trooper Joe Green. We knew we couldn't get any help from there and we didn't know how far he was involved in the sheriff's office or the State Police office through that and it was out of the jurisdiction of the City police. (Emphasis by the Court)

"Col. St. Amant:

What did you do then?

"Mr. Albin:

Well, we rode around awhile trying to decide what to do. Finally, we decided that we would go to the hall ourselves and see if there was any way we could stop them if we saw

them coming out with the safe. We arrived a little too late, somewhere in the neighborhood of 9:00, the safe was gone. The next morning there was an investigation. Brother Herman Thompson came out and investigated and I understand that Lieutenant Joe Green showed up. They seemed to think it was a job by a professional. I agree with them."

The above quoted portion contains the sole reference upon which plaintiff's case is based.

In the Trial Judge's original reasons for judgment and in the briefs filed by counsel for plaintiff and for defendant much jurisprudence is cited and there is a great deal of discussion as to what does or does not constitute actionable libel or slander. However, since the rendition by the Supreme Court of the United States in the case of New York Times Company v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, and in Garrison v. State of Louisiana, 279 U.S. 64 85 S.Ct. 209, most of what was discussed is now moot and of no relevancy.

Before discussing the effects of the above cited decisions on actions of libel and slander in Louisiana, we feel should point out certain factual matters, some contested and some uncontested, which are relevant to

the issues herein and which will determine whether or not the issues in this case fall within the rule laid down by the United States Supreme Court in the recent decisions cited above.

It is undisputed that the plaintiff, Herman A. Thompson, is a well qualified, experienced law enforcement officer, having graduated from the F.B.I. National Academy, Southern Police Institute of Louisville, Kentucky, and is also a graduate of all phases of the Louisiana State University's law enforcement training program and of the East Baton Rouge Parish Sheriff's Department's own training school. He has the complete confidence of his employer, Sheriff Bryan Clemmons. Sheriff Clemmons testified that it was part of plaintiff's duties to participate in various fund-raising drives for East Baton Rouge Parish, including the Baton Rouge Kids' Baseball Clinic, the Mothers' March, March of Dimes, Elk's Christmas Funds Baskets, and others.

The undisputed facts also show that the plaintiff, Herman A. Thompson, was acquainted with the said E. G. Partin; that they were on first name basis; and that plaintiff was a frequent visitor to the Union Hall. Captain Thompson admitted this in his testimony:

> "Q. Isn't it true that you were a rather frequent visitor at the Union Hall and used to drop in once a week or maybe every ten days:

A. That's right.

Q. To pass the time of day?

A. To pass the time of day and just to talk to the two secretaries, to use the phone and different things like that."

He also admitted that he collected charitable contributions from Ed Partin for the Baton Rouge Kids' Baseball Clinic.

With regard to the stolen safe referred to in the quoted portion of the affidavit, the plaintiff testified that he investigated the matter with Chief Criminal Deputy George LeBlanc, who made the report, and that the Crime Lab from the State Police also assisted, and he added: "I will have to admit that there was not as much effort put out as should have been for the simple reason the night before someone had burglarized Food Town of over fifteen thousand dollars and a lot of drugs were involved and it had everyone of us tied up on that."

Both the plaintiff and Sheriff Clemmons admitted that various members of the Union might be aware that Mr. Partin on occasion gave Mr. Thompson money for some purposes, and while they both insisted that these funds were charitable contributions collected by the plaintiff for the Sheriff's office to be distributed to the proper

charities, it is not inconceivable that some union members might have been suspicious of this exchange of funds.

Mrs. Marjorie Ann Smith was called as a witness in behalf of the defendant. She had been employed as a secretary for Teamsters Local No. 5 from September of 1958 to August of 1961. She testified that the latter part of February or the first part of March, 1961, she received instructions from Mr. Ed Partin and "called Mr. Herman Thompson at the Sheriff's office and he wasn't in, so I left word for him to call the Union, that we had something down there for him, and he was gone on a fishing trip and so a couple of days later Mr. Thompson came by the Union Hall and he said he wanted to pick up the envelope, and so Jeanette handed it to him out of her desk drawer and he folded it and put it in his pocket." She further testified that before Captain Thompson came to pick up the envelope she and Jeanette, another secretary working with her, opened the envelope and found that it contained five twenty dollar bills. She was asked what they did after the opened the envelope and said she:

"A. We put it in another envelope and sealed it up.

Q. Now, what type of an envelope was it, Mrs. Smith, in the first place?

A. It was a legal size envelope,

one of the Teamsters', with the Teamsters' emblem and address on it.

Q. Was it addressed to anyone?

A. It just had Herman Thompson's name on the front of the envelope.

Q. Are you familiar with the handwriting in which the name 'Herman Thompson' was written?

A. Yes, sir, it was Mr. Partin's."

When asked what prompted them to open the envelope she said they knew Mr. Partin was under investigation and they were just wondering what was in the envelope. She could not, however, remember whether she ever reported this incident to the law enforcement officers and said "I have been before the Federal Grand Jury and I can't remember if that was brought out or not." She also admitted that she knew Captain Thompson had picked up some checks for Kids' Baseball; that it was not unusual for Mr. Partin to give money for all the major campaigns in the area, but that this was the first cash she had ever seen. She said Captain Thompson came by the Union Hall more frequently than other officers, usually while on duty and dressed in a suit, but sometimes when he was off duty and dressed in casual clothes and that sometimes he brought his little boy with him.

The testimony of the defendant, Mr. St. Amant, is, of course, also relevant and we quote below the pertinent portion thereof:

"Q. Now, sir, at the time you made your speech, did you give any consideration whatsoever or anything at all to what effects the reference to Captain Herman Thompson's name in this speech might have upon him?

A. Actually, when the original tape was made, and understand that when I read the affidavit I did not feel that I had any right to read parts of an affidavit or to just take sections from it. I do not understand the law on this, but I believe if I am going to give a document or affidavit, I should give the whole thing, and as I asked the question, I never mentioned the name of Herman Thompson. Herman Thompson wasn't even in my mind. I didn't even ask anything concerning the Sheriff's office. I asked quite an entirely different question, as you will see from the transcript, and out of this came a long story in which Mr. Thompson's names was used as explanation of why he felt there was a close personal relationship there that would keep him from

going to the Sheriff's office. I neither elicited his name nor did I anticipate his name. Now, when I read the affidavit, I knew the name was in there and I did not consider that this was going to do anything to Mr. Thompson. In fact, I believe it has not. He was a Captain and is a Captain. I don't believe he has been suspended for five minutes and I don't believe he has lost any pay.

Q. Mr. St.Amant, with that knowledge and knowing that this reference to Captain Thompson was in this speech, you then permitted this very speech that we have listened to to be transcribed and circulated to the members of the press?

A. I certainly did. I don't know what this money was for, Mr. Attorney, I did not suggest what the money was for, nor has-- did Mr. Albin suggest what it was for.This could have been for his favorite charity for all I know, but as Mr. Albin explains, he couldn't go to him because he was contributing to this man, for whatever purpose. A close personal relationship existed.

* * * *

Q. So you left, you made the remarks, and left the inferences for the public to draw what

they might, is that right?

"A. I made the remark and let the public draw the conclusion that they might from the remark, which I believe was properly made at the time. I think you will find that Mr. Thompson's name, except from in quoting Mr. Albin, was never mentioned by me and no inference was drawn by me in further questioning that followed this. I had no interest at the time in Mr. Thompson. I had interest in Senator Russell Long, and I wanted to establish that here is a man in the public eye in a most disreputable fashion, and I am sure Mr. Thompson did not think I was speaking of him. I was speaking of the business agent who was notoriously in trouble at the time and was being helped out by a United States Senator to the detriment of his men, to the detriment of the working people of this parish. I believe this was true and I presented it as such. I have had no suits or opposition on this score from anybody else.

Q. In other words, Mr. St. Amant, you were after the big shot, so to speak, Senator Russell Long, and were not worried about the smaller individual, so to speak, that might have been involved down the way, is that correct?

A. Let's not draw an inference from my answer on that. I was not concerned with them. I did not think it concerned them."

It is clear that the Trial Judge was aware of the effect of the New York Times decision, supra, upon actions of this type for he granted a rehearing in order to consider the effect of that case upon the case at issue. The Garrison case, supra, was decided after the New York Times decision and was not considered by the Trial Judge in his reasons for judgment on rehearing. Although the Garrison case dealt with the Louisiana defamation statute, LSA-R.S. 14:47, it is also most relevant to the case at issue for in the Garrison case the rule of the New York Times case on libel was applied to the Louisiana statute and the comments and explanations of the rule in the Garrison case are therefore relevant to the case at issue since it is clear from a reading of both cases that the rule for libel in cases regarding a public official's conduct is the same whether it be civil libel or criminal libel.

We quote below the Trial Judge's Reasons for Judgment on rehearing:

"The Court rendered oral reasons for judgment in favor of the plaintiff in the sum of $5,000.00 on a finding that defendant had libeled plaintiff in a political address which was subsequently printed and distributed by the defendant. The Court

has no misgivings about its decision that the remarks made by defendant were libelous but has entertained the motion for a new trial to consider the case in the light of the holding by the United States Supreme Court in the case of New York Times Company v. Sullivan, 84 S.Ct. 710 (1964). That case held that:

"'The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'---that is, with knowledge that it was false or with reckless disregard of whether it was false or not.'

"Therefore, in light of the above quoted case, an inquiry into (1) whether or not the plaintiff is a public official and (2) whether the statement made by defendant was made with 'actual malice'---that is, with knowledge that it was false or with disregard of whether it was false or not is pertinent to a decision in this case.

"The case of State v. Mayeux, 81 So. 2d 426, had considered the status of a deputy sheriff such as the plaintiff Captain Thompson:

"A deputy sheriff is a state officer created by the Legislature

and his appointment is provided for in LSA-R.S. 33:1433. Williams v. Guerre, 182 La. 745, 162 So. 609, and the authorities cited therein.'

"In Gray v. De Bretton, 188 So. 722, 724 (1939), further reference to a deputy sheriff as a public officer is made in the following language:

"'The relation between a sheriff and his deputy is an official and not a private relation. The deputy is not a representative of the sheriff in his individual capacity, but he is a public officer whose authority and duty are regulated by law. As to the public, whose servants these officers are, the acts and omissions of a deputy sheriff are the acts and omissions of the sheriff himself.' (Emphasis by the Trial Judge)

"Further evidence that he is a public officer is found in the fact that Article 19, Section 1, of the Constitution of 1921 provides that "All officers. . . shall take the following oath or affirmation. . ," and R.S. 33:1443 under the title of 'Public Officers' provides for the office of deputy sheriff and requires the taking of the oath and for the filing of a bond.

"Having found plaintiff to be a public officer, the rule enunciated in New York Times Company v. Sullivan, supra, is applicable, namely, that malice may

not be implied in the case of a public official (officer) and that actual malice must be shown, that is, with knowledge that it (the statement) was false or 'with disregard of whether it was false or not.'.

"Previously, the Court in its oral decision from the bench applied the Louisiana law which was just recently stated in the case of Lamartiniere v. Daigrepont, 168 So.2d 373 (October 27, 1964), La. App. 3rd Cir.:

> "'. . . the defendant states, as a witness, that he entertained neither malice nor ill will against the plaintiff at the time it was uttered; yet, in such case, the law imputes malice to the act, on account of its character, for the use of opprobrious epithets implies malice when they are slanderous per se. It suffices to maintain an action to recover damages without proving special injury to the party defamed.'

"Thus, the Court's decision cannot stand on the basis that malice may be implied by the mere character of the statement in light of its holding that plaintiff is a public official, and that brings us to the final question of whether under the federal rule as enunciated in New York Times Company v. Sullivan (supra) the plaintiff has shown actual malice.

"Mr. St. Amant stated that he intended no malice toward Captain Thompson, that he was in a political fight with Senator Russell Long and had no interest in Captain Thompson. In reply to a question by plaintiff's counsel as to whether he gave any consideration to what effect the statement in the affidavit of Mr. Albin would have on Captain Thompson, he replied that Captain Thompson was not even in his mind. He further testified that he did not consider that Captain Thompson would be harmed by the statement and that he did not know what the money was for and that for all he knew the same could have been for Thompson's favorite charity. Finally, he admitted that as far as he was concerned he would let the public draw whatever inference it liked with regard to his reference to Captain Thompson.

"Therefore, in Mr. St. Amant did not even know Captain Thompson or have any interest in him, and if he did not know what the money was for, which is evidence that he made no attempt to investigate whether there was any relationship between Mr. Partin and Captain Thompson, to justify his charge that Captain Thompson was being paid off, and if he never gave any consideration as to what effect those remarks might have on Captain Thompson's reputation and character and was content

> to let the public draw whatever inference it desired concerning these remarks, then fairness dictates that despite defendant's avowed absence of ill will toward Captain Thompson or intent to do him harm or damage, he acted with reckless and wanton disregard for whether the statement was false or not and in the language of the Sullivan case 'with disregard of whether it (the statement) was false or not.'
>
> "The Court is satisfied that its original opinion was correct, and for the reasons here stated the motion for a new trial is denied and judgment will be signed in favor of the plaintiff as originally rendered herein."

We feel that the definition of a public official as set forth in the Judge's reasons for judgment on rehearing clearly answers the question as to whether or not the plaintiff is or is not a public official, and therefore the plaintiff's contention, as set forth in his brief, that he is not a public official has no merit, and the rule of the New York Times case does apply to plaintiff. We make this statement fully aware that in footnote 23 in the New York Times decision the Court said: "We have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories

of persons who would or would not be included." Nor do we agree with the contention that as the Court in the New York Times case did not define official conduct, that the conduct herein was not official but of an extra-curricular activity, that is, soliciting money for civic charities. This position is also without merit because it is not that conduct which is criticized in the affidavit. The affidavit deals with the fears of the affiant concerning the manner in which the plaintiff would or would not discharge his duties if the mentioned safe was stolen. It is the relationship of Mr. Partin and the plaintiff in his official capacity that is the subject of the affidavit, not the reason for the plaintiff's appearances at the Union Hall.

In the New York Times case the Court held that the Constitution limits state power in a civil action brought by a public official for criticism of his official conduct to an award of damages for a false statement "made with 'actual malice' - that is with knowledge that it was false or with reckless disregard of whether it was false or not." Garrison v. State of Louisiana, supra. Therefore, the central issue in this case is whether the facts bring it within the rule of the New York Times case, which rule was further enunciated in the Garrison case, and that is, were these statements made with "actual malice - that is with knowledge that it was false or with reckless

disregard of whether it was false or not." The record does not show that the statements made by the defendant about the plaintiff were made with knowledge that they were false. Therefore, we are not concerned with that portion of the definition of actual malice that deals with "knowledge that it was false" but there is no proof, but are concerned with whether or not, in view of the facts in the case, the statements made by the defendant were made "with reckless disregard of whether it was false or not." It should be pointed out that the proof of actual malice is on the plaintiff, New York Times Company v. Sullivan, supra, that is, the plaintiff must prove that the statements were made with the knowledge that the same were false or with reckless disregard as to whether such statements were false or not.

Neither the Garrison case nor the New York Times case sets forth with any degree of clarity the steps the plaintiff must or must not take in order to determine whether or not statements were made with reckless disregard as to whether such statements were true or false. Mere negligence in determining whether or not a statement is correct is not a showing of actual malice. New York Times Company v. Sullivan, 376 U.S. 254, 288, 84 S.Ct. 710, 730. Nor does speaking out of hatred mean actual malice under the New York Times and Garrison rule. In the Garrison case the Court said:

"Moreover, even where the utterance is false, the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any except the knowing or reckless falsehood. Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth. Under a rule like the Louisiana rule, permitting a finding of malice based on an intent merely to inflict harm, rather than an intent to inflict harm through falsehood, it becomes a hazardous matter to speak out against a popular politician, with the result that the dishonest and incompetent will be shielded.' Noel, Defamation of Public Officers and Candidates, 49 Co.L.Rev. 875, 893 (1949). * * *"

A study of the New York Times case and the Garrison case makes it clear that there must be more than an inference drawn before a statement can be said to fall within the rule of those cases. The mere fact that criticism of the manner in which a public official performs his duties would tend to affect his private reputation as well as his public reputation would not render inapplicable the New York Times rule.

Garrison v. State of Louisiana, 379 U.S. 64, 77, 85 S.Ct. 209, 217. It would certainly follow that if the statement made by the District Attorney of Orleans Parish and quoted in the Garrison case to the effect that

> "The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints,"

is not libelous under the New York Times rule (the application of the civil rule of libel as announced by the Supreme Court in that case to criminal libel in Louisiana), then certainly the statements made by the defendant Mr. St.Amant in the present case would not be libelous under that rule.

There is only one statement in the affidavit involved in this case which could possibly have damaged Captain Thompson and that was the statement "we also knew of money that had passed hands between Ed and Herman Thompson, from Ed to Herman." Since the facts show that the plaintiff was well acquainted with Mr. Partin and had been seen by the Union people collecting money at the Union Hall (which could conceivably make a discontent Union member who was opposed to

the Union leadership suspicious of the relationship) the use of the quoted statement could not be said to have been used with reckless disregard as to whether false or true.

The statement of the Trial Judge that Mr. St. Amant did not have any interest in Captain Thompson and did not know what the money was for, which the Judge said is evidence that he made no attempt to investigate whether his statements were true in order to justify his charge that Captain Thompson was being paid off and that he gave no consideration as to what effect the remarks might have on Captain Thompson's reputation and character but was content to let the public draw whatever inference it desired, would not place the case under the New York Times rule of proving he acted with reckless and wanton disregard for whether the statement was false or not. This actually was another way of applying the rule of Lamartiniere v. Daigrepont, 168 So.2d 373, quoted by the Trial Judge, in that the Trial Judge was imputing malice to the act on account of its character.

It is clear from the record in this case that the reputation of Captain Thompson, who is highly regarded and a well respected police official, was injured by the statements made, which statements had no relevancy whatsoever to the issue which the plaintiff was attempting to get across to the public, and that Captain Thompson was the victim of intemperate "mud slinging." It is

also the opinion of this Court that prior to the decisions of the United States Supreme Court in the New York Times and the Garrison cases the words of the plaintiff would have been libelous under the Louisiana jurisprudence. However, in view of the U.S. Supreme Court's holding that the Constitution delimits a State's power to award damages for libel in actions brought by public officials against critics of their official conduct, as discussed above, this Court has no alternative but to hold that the judgment of the Trial Court is in error and should be reversed and there should be judgment in favor of the defendant dismissing plaintiff's suit at his cost.

REVERSED.

A TRUE COPY:

S/ J. Clyde Pearce
Dy. Clerk
Court of Appeal,
First Circuit
State of Louisiana

(SEAL) Filed Feb.28,1966

...oOo...

JUDGMENT OF THE SUPREME COURT

(Number and title omitted)

ON WRIT OF REVIEW TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

SUMMERS, Justice.

This action for $150,000 in damages for an alleged libel was instituted by Herman A. Thompson, a deputy sheriff of the parish of East Baton Rouge, against Phil A.St. Amant, a retired Army officer and business man of that parish.

The trial court found that the plaintiff, Thompson, had made out his cause of action and, accordingly, condemned the defendant, St.Amant, to pay $5,000 as damages. Upon proper and timely application, a new trial was granted to reconsider the case in the light of New York Times Co. v. Sullivan, 376 U.S. 254 (1964), which had been handed down in the meantime. After reconsideration the trial judge reinstated his original judgment. On appeal the First Circuit reversed, and we granted review on Thompson's application.

The petition alleges that, on June 27, 1962, St. Amant, who was then a candidate for the office of United States Senator, appeared on a television program in Baton Rouge and delivered a political campaign address which was also reduced to writing and distributed to the press and other news media.

In the beginning of his speech St. Amant said:

McCALEB, J., dissents with written reasons.

HAMLIN, J., dissents, being of the view that the result reached by the Court of Appeal is correct. See also Time vs. Hill, 87 S Ct., 534.

> "I have a story to reveal tonight which is so unusual that I have bought this time on the television to inform the public. This story involves a well-documented criminal, and ex-convict who became a labor chieftain. It involves misuse and theft of union funds, dealings with Communist officials of Cuba, a criminal conspiracy to destroy evidence and the destruction of that evidence; death resulting from the commission of a felony and a second death by a hit and run by a union car."

The address thereafter consisted principally of the reading by St. Amant of a transcript of an interview which he had previously had with one J. D. Albin, a member of the local Teamsters' Union. The interview was in question and answer form, with St. Amant asking the questions which Albin answered. At St.Amant's urging, Albin had sworn to the correctness of the facts he recounted, and St.Amant had possession of the affidavit in written form.

By its content the speech was unmistakably designed to disclose Albin's knowledge of illegal, unsavory and criminal actions by E. G. Partin, business agent of the local Teamsters' Union. In the speech St. Amant claimed Senator Russell B. Long, his opponent and the incumbent United States Senator, had recommended Partin to James Hoffa, the union president. By this disclosure

he sought to disparage his opponent.

Included among Partin's activities, according to Albin's statements which St. Amant read, was a visit by Partin with Fidel and Raoul Castro in Cuba during November 1960. St.Amant quoted Albin as saying that Partin was responsible for the negotiation of a labor contract in Baton Rouge, giving up many wage benefits and surreptitiously continuing a practice of longer working hours contrary to the interest of union members. Partin was accused of using union funds for his personal benefit, to pay house notes and the rent for his girl friend's car.

Albin related that Partin took "numerous amounts of money out of the cash drawer during the week and at the end of the week he made this up by making a check out to someone else who would endorse it and they would deposit it into the union fund." Albin then relates, in response to St. Amant's questions, that these practices prompted a local union member to write a letter to Arthur Goldberg, then Secretary of Labor, with a copy to James Hoffa, asking for an investigation of Partin's local union by the union hierarchy. According to Albin, when Partin learned of this he became "pretty riled up" and enlisted four members of the union to "help him get rid of the safe" which contained the union records. Albin continued:

"Now, we knew that this safe was

> gonna be moved that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson . . . from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We know we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police."

In his narrative Albin asserted that the safe disappeared that night and that Thompson and Lieutenant Joe Green of the State Police investigated the case but nothing happened. The safe turned up "a few months later, Albin said, when a young man by the name of Forman dove off the river bridge and hit his head on the safe....killing himself." This death St. Amant and Albin characterized as "a death resulted (sic) from the commission of a felony." They concluded Forman's death was a "murder" for which, they implied, Partin was responsible.

Then followed statements by Albin, all of which were likewise read by St. Amant, purporting to give information from Partin's "rap sheet", revealing that Partin had been either arrested,

charged or convicted for robbery, auto theft, breaking and entering, "second degree burglary", rape, and robbery with firearms. Albin charged that Partin was responsible for the death of a young soldier in Alabama, killed in a hit-and-run automobile accident while Partin was driving the offending vehicle.

St. Amant continued to read the transcript of his interview with Albin, quoting Albin's story of why A.G. Klein, a good friend and a union member, was not "testifying today." He quoted Albin as saying that Klein, who had knowledge of the "safe incident" and other illegal activities of Partin, testified before a Federal Grand Jury in New Orleans, and that shortly thereafter Klein met his death in St. Francisville when a truck "dropped on top of him loaded with about ninety thousand pounds of sand."

St. Amant's presentation of this political address- the manner in which he expressed himself, the tone and theme of the speech, the obvious manifestation of his belief in the veracity of Albin's statements- was calculated to impress upon the reader or listener that he had confidence in Albin's charges against Partin and Thompson and that he believed them to be true. The publication was principally designed to malign the conduct of the incumbent United States Senator; but to do this it was necessary to show Partin's unsavory character and criminal record. Thompson's name was brought into the story only incidentally, yet, he was

nonetheless unmistakably accused of criminal conduct.

In his petition Thompson alleged that the publication by St. Amant was false, libelous, scurrilous and malicious and was intended to belittle, degrade and redicule him. Clearly, he alleged, the publication reflected a design and intent on the part of the defendant, St. Amant, to defame, slander and libel Thompson's good name, reputation and character before his friends, the courts and the public in general. From St. Amant's remarks, the petition alleges, the false and defamatory imputation arises that Thompson was guilty of gross misconduct of a nefarious nature.

In his answer St. Amant admitted making the speech but denied that he defamed or intended to defame Thompson. He alleged that the context in which the remarks concerning Thompson were made shielded those remarks from any defamatory imputation. In the alternative, he alleged that the utterances concerning Thompson were true and their publication was for the public good. Even if not true, he alleges, there was no malice on his part.

As it is settled in Louisiana that the truth of a defamatory remark is generally a valid defense in a civil suit for defamation, it becomes necessary to decide initially if the remarks concerning Thompson were true. If they are shown to be true that would ordinarily

end the case. If the utterances are false, however, we must then proceed to determine if they are defamatory and actionable. La. R.S. 13:3602; Deshotels v. Thistlewaite, 240 La. 12, 121 So. 2d 222 (1960). Both the trial court and the Court of Appeal decided that the statements were not true, and we agreed.

By his testimony at the trial, Thompson acknowledged that he first knew Partin in connection with labor disputes - to which Thompson had been assigned for duty. He got to know Partin better, he said, while investigating burglaries at the union hall. In fact, because he had been designated for special duty by the sheriff, he was required to come in contact with almost all of the union business agents in Baton Rouge. He knew them all by their first names and readily conceded that he received funds from Ed Partin when he picked up a check every year for the Baton Rouge Kids' Baseball Clinic. The United Mine Workers, pipefitters', electricians', carpenters', and other unions and several civic and charitable organizations were also solicited by him.

Other duties assigned to him included supervising a bell-ringing campaign for the Salvation Army, soliciting for the Volunteers of America, the March of Dimes, the Cystic Fibrosis Fund, the Elks Club and the Lions' Club. He assisted in these civil and charitable undertakings as a public service. And except for

such solicitations, he had no connection with Partin other than as a law enforcement officer.

An effort was made to discredit Thompson's testimony that he had only received "checks" from Partin in the solicitations. Partin's former secretary, Marjorie Ann Smith, testified that Partin once gave her an envelope for delivery to Thompson. She stated that she and Jeanette Fletcher, another employee in the union office, opened the envelope and saw five twenty-dollar bills. According to Marjorie Ann Smith's testimony, Jeanette Fletcher handed the money to Thompson in a sealed envelope. Thompson , however, categorically denied having received any cash. The trial judge and the Court of Appeal rejected the Smith woman's testimony and accepted Thompson's version that no money passed from Partin to him, other than checks representing donations by the union to charitable and civic organizations. Since Marjorie Ann Smith's testimony was rejected and Jeanette Fletcher did not testify, there is no evidence to support the charge that "money passed" from Partin to Thompson. On this vital issue of fact, which bears so heavily on our decision, we agree with the trial court and the Court of Appeal.

Moreover, as the determination of this issue involved the credibility of the witnesses Thompson and Smith and because there is no other evidence upon which a contrary result could be

reached, the record will not support reversal of the findings of both the trial court and the Court of Appeal. Not only do we find that the remarks about Thompson were false, we find that the record reflects impressively his integrity and good character.

Thompson admitted that checks passed to him from Partin as a solicitation for the Baton Rouge Kids' Baseball Clinic, but the remarks contained in St. Amant's publication say much more. Sheriff Bryan Clemmons, Thompson's employer, found it necessary to defend Thompson against the charges contained in the speech. For many citizens called the sheriff for an explanation because they believed that St. Amant had accused Thompson of taking a pay-off from Partin. A neighbor who heard the broadcast told Thompson that "some man" had called him "some kind of thief and all kinds of names." The meaning the controverted remarks convey to the average reader is utterly defamatory of Thompson.

Preceded and followed as the remarks about Thompson were by the numerous charges of criminal conduct on the part of Ed Partin, linked as those words were with the sequence of events concerning the theft of union funds and the destruction of the safe, it is difficult to ascribe to the words "We also knew of money that had passed hands between Ed and Herman Thompson... from Ed to Herman" any meaning except that they charged Thompson with taking a criminal pay-off from Ed Partin.

Charging that "we knew we couldn't get any help from there", in the context in which it was used, was a charge that Thompson would aid and abet the wrongdoer rather than perform his duty and enforce the law or otherwise help prevent the commission of a crime. And it is fair to conclude that the defamatory character of these words was in all probability heightened by a dramatic oral presentation.

These are statements of fact. They cannot be said to be expressions of opinion or comments within the rule of "fair" comment. 1 Harper & James, Torts § 5.26 and § 5.28 (1956).

It is one thing to state an innocent fact; it is another to state it in such a manner that it charges criminal conduct to the average listener and to a significant segment of the community. In the latter instance, the party who utters the words bears the burden of establishing either their truth or some justification sanctioned by law; otherwise he must bear the legal consequence of his indiscretion and the injury suffered by the victim of his remarks. In a civil suit those consequences are damages measured in money. Lewis v. Louisiana Weekly Publishing Co., 189 La. 281, 179 So.315 (1938).

In keeping with this principle, this court in recent years said that:

> "A mere insinuation is as actionable as a positive assertion, if the meaning is plain; and if the words used, when taken in their ordinary acceptation, convey a degrading imputation, no matter how indirectly, they are libelous - it matters now how artfully their meaning is concealed or disguised." Madison v. Bolton, 234 La. 997, 1010, 102 So.2d 433, 437-438 (1958).

The guarantees of freedom of speech and of the press embodied in our state and federal constitutions, though designed to assure broad freedom for the expression of opinion, do not permit unrestrained license or confer the right upon an individual to speak or print whatever he chooses without bearing the responsibility for the utterance. Where the published matter is false, malicious and injurious, full responsibility for the damage it may cause is exacted by the law, unless a proper defense or justification is established. Kennedy v. Item Co., 213 La. 347, 34 So.2d 886 (1948); Fitzpatrick v. Daily States Publishing Co., 48 La. Ann. 1116, 20 So. 173 (1896).

Realizing that these propositions would establish his legal responsibility for false and defamatory utterances, St. Amant asserts that, if we find the remarks to be false, then his defense is that Thompson was a

"public official". Thus, he is prohibited from recovering damage for a defamatory falsehood relating to his official conduct, unless he proves the statement was made with "actual malice" --that is, with knowledge that it was false or with reckless disregard of whether it was false or not. He relies upon the ruling in New York Times Co. v. Sullivan, 376 U.S. 254 (1964) to support this contention.

In the New York Times Case, the United States Supreme Court held that, in a civil action brought by a public official for criticism of his official conduct, the First and Fourteenth Amendments to the Federal Constitution limit state power to an award of damages for a false statement "made with 'actual malice' - that is, with knowledge that it was false or with reckless disregard of whether it was false or not." See Garrison v. Louisiana, 379 U.S. 64 (1964).

Thus the issue is clearly formed. At this phase of our deliberation we must decide whether Thompson, a deputy sheriff, is a "public official" within the meaning of the rule announced in the New York Times Case. We hold that he is.

A deputy sheriff is a state officer whose position is created by the legislature. His appointment is provided for by Title 33, Section 1433, of the Revised Statutes of this State. State v. Mayeux, 228 La. 6, 81 So. 2d 426

(1955); William v. Guerre, 182 La. 745, 162 So. 609 (1935). Article 19, Section 1, of the Louisiana Constitution of 1921 requires that all officers of the State shall take the prescribed oath. This constitutional mandate has been implemented by the legislature to require deputy sheriffs to take that oath (La. R.S. 33:1433). The relation between a sheriff and his deputy, then, is an "official" and not a "private" relation. The deputy is a representative of the sheriff in his official capacity; he is a public officer or official whose authority and duty are regulated by law. So far as the public is concerned, the acts of a deputy are the acts of the sheriff himself.

However, because Deputy Sheriff Thompson is technically a "public official" under Louisiana law, it does not follow that the rule announced in the New York Times Case applies to this case. The real test is whether the official has, or appears to the public to have, "substantial responsibility for or control over the conduct of governmental affairs." Rosenblatt v. Baer, 383 U.S. 75, 85 (1966). See also Bertlesman, Libel and Public Men, 52 A.B.A.J. 657 (1966).

The deputy acts for the sheriff, and his acts are the acts of the sheriff. The sheriff's position in government vests him and his deputies with "substantial responsibility for or control of governmental affairs" at least where law enforcement and police functions are concerned. The New York

Times rule applies, therefore, to this deputy sheriff. Gilligan v. King, 48 Misc. 2d 212, 264 N.Y.S. 2d 309 (1965); cf. Henry v. Collins, 380 U.S. 356 (1965) and Pope v. Time, Inc., 354 F. 2d 558 (7th Cir. 1965).

It remains, in the light of the conclusions we have already reached, to determine whether the false and defamatory remarks concerning Thompson were uttered by St. Amant with "reckless disregard" of whether they were false or not.

The most important witness to the crucial fact in this regard was Marjorie Ann Smith. It was she who testified that, following Partin's instructions, Jeanette Fletcher gave an envelope containing five, twenty-dollar bills to Thompson. Her testimoney is relied upon to establish the truth of the statement that "pay-off" money passed from Partin to Thompson or, at least, to relieve St. Amant of any charge that his utterances were in "reckless disregard" of whether they were false or not. Yet the first time St. Amant contacted her to verify this occurrence was after the lawsuit was filed and, of course, long after the political address had been televised and otherwise widely disseminated. Jeanette Fletcher, the only other witness to the occurrence, was not called to testify on this vital issue, and her failure to do so was not explained.

"Having no personal knowledge of Thompson's activities, St.Amant relied upon Albin's sworn statement to verify the truth of the defamatory matter. Albin, however, did not testify. (St. Amant explained that he was ill and in the hospital.) Nowhere in the record is the reliability or the reputation for truth or veracity of Albin shown.

Although St. Amant testified that he had other affidavits to support some of the facts detailed in his address, none were produced. When asked if he gave any consideration to the effect the speech would have on Thompson, he replied that Thompson "wasn't even on my mind." Partin was his main concern; and in his zeal to show a bad character and background in Partin and to link him to his opponent, he gave no consideration whatsoever to Thompson. He was heedless of the effect his address would have on Thompson or of the truthfulness or not of the statements concerning him.

St. Amant's testimony indicates that he was laboring under the mistaken impression that because the words concerning Thompson were not in themselves defamatory he could not be involved in what might be implied from those words, such as the charge of criminal conduct which was implicit in them because of the context in which they were used. St. Amant felt he would be shielded from any responsibility because he was quoting Albin. In his own words, "Herman Thompson wasn't even on my mind." It was reckless error for him

to take this position. Such a faulty assumption was in utter disregard of whether the remarks about Thompson were true or false.

We think the record contains adequate proof of actual malice on the part of St. Amant- that is, a reckless disregard as to whether the statements concerning Thompson were true or not.

Although"public men are, as it were, public property"[1] we do not feel that the freedom of "uninhibited, robust, and wide-open[2] debate on public issues guaranteed by the First Amendment to the Federal Constitution can "sensibly be turned into an open season to shoot down the good name of any man who happens to be a public servant."[3]

No proof of damages was necessary, and we do not regard the verdict as excessive.

For the reasons assigned, the judgment of the Court of Appeal is reversed, and the judgment of the trial court is reinstated and made the judgment of

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1 Beauhornais v. Illinois, 343 U.S.250, n. 18 (1952).

2 New York Times Co.v. Sullivan, 376 U.S. 254 (1964).

3 Tucker v. Kilgore, 388 S.W. 2d 112 (Ky. 1965).

this court,

SUPREME COURT OF LOUISIANA
FILED MAR 28, 1967

V.J. Courville Clerk

REHEARING REFUSED MAR 27 1967

A TRUE COPY Clerk's Office, New Orleans, March 28, 1967

s/ Harold A. Moise, Jr.
Dy Clerk Supreme Court of Louisiana

HERMAN A. THOMPSON VS. PHIL A. ST. AMANT -NO. 48,184

McCALEB, J., Dissenting.

I am in disagreement with all factual and legal conclusions of the majority opinion save one- that is, that plaintiff, Thompson, is a public official whose activities come within the rule laid down by the Supreme Court of the United States in New York Times Co. vs. Sullivan, 376 U.S. 254 (1964).

In the first place, it is my view that the evidence in this case clearly discloses that the facts related in the sworn affidavit of J. D. Albin (which affidavit was read by St. Amant on television) are substantially true. Thompson admits in his testimony that he was a good friend of the labor leader,

Partin (he called him Ed and Partin called him Herman), and was a rather frequent visitor at the Union Hall. He says that he regularly visited the Hall once a week or every ten days to pass the time of day and talk to the two lady secretaries, also to use the phone and "different things like that". He received contributions from Partin for the Baton Rouge Kids' Baseball Clinic but insists that he was given checks, vehemently denying that any payments were made in cash. At first, he denied that these checks were delivered in envelopes but later admitted that, on one or two occasions, the contribution had been placed in an envelope. He said: "Once or twice there has been an envelope but I never opened it. I would bring it in and give it to Polly."(1) He testified further that

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1. Polly, to whom he refers, is Mrs. Coxe, the sheriff's secretary, who, Thompson and the sheriff say, kept the record of the collections made by Thompson (he was specially assigned for this extra curricular activity by the sheriff and he solicited, besides the Teamsters, the Electricians, Carpenters, Pipefitters, United Mine Workers and several other labor unions operating within the Baton Rouge area) in the fund-raising drives for various organizations - Baton Rouge Kids' Baseball Clinic, the Baton Rouge Mothers' March, March of Dimes, Elks' Christmas Fund Baskets, the Eagles Christmas Baskets, Lions Club Light Bulb Sale, the

(continued on next page)

he never received anything other than the contributions from Partin and that, when he graduated from the F.B.I. School and had successfully cleared certain burglaries at the Union Hall, Partin sought to reward him by offering him a suit of clothes and a check as a present. However, he says he rejected the offer and reported the matter to the sheriff.

It is thus seen from Thompson's testimony that Albin's statement in his affidavit - that "We also knew of money that had passed hands between Ed and Herman Thompson * * * from Ed to Herman" was true unless it be that

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1-

Continued from Page 202)

Volunteers of America, Cystic Fibrosis and the Shrine Circus. According to Sheriff Clemmons, it came as no surprise to him that some of the members of the Teamsters' Union (evidently meaning Albin and others) might be aware that Partin was giving Thompson money for some purpose and he further testified that Thompson had received cash as well as checks in his solicitation activities from other sources but not from Partin.

there is a technically factual difference in payment by check or by cash. (2)

True, the affidavit states that "money had passed hands" but in usual parlance the term is broad enough to cover payment by check as well as cash. Yet the majority opinion attaches such significance to the evidence on this score. The opinion relies heavily on the statement of Thompson, and interested witness, and rejects as false and unreliable, the testimony of Mrs. Marjorie Ann Smith, one of the secretaries at the Teamsters' Hall, an apparently disinterested witness, who stated unequivocally that Partin had placed five $20.00 bills (which she saw) in an envelope which was delivered by the other secretary, Jeanette Fletcher, to Thompson under Partin's instructions.

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Indeed, Thompson indicates that he did not know whether the payments enclosed in envelopes were made by check or cash, for he testified in rebuttal that, when the payment was in an envelope, "*** I just brought the envelope in and gave it to Polly and didn't bother to open it."

For my part, I perceive no valid reason for the rejection of Mrs. Smith's evidence. The deduction that her testimony is unworthy of belief seems to be founded in part on the failure of St. Amant to call Jeanette Fletcher, the other secretary, who Mrs. Smith says also observed the $20.00 bills in the envelope, to corroborate Mrs. Smith's statement. But I know of no law placing such burden on St. Amant. It is not shown that he was acquainted with or had any control over Miss Fletcher who, as the record shows, was acquainted with Thompson and presumably available to him as a witness. Actually, since this phase of the case reduces itself to the affirmative statement of Mrs. Smith that cash was passed and the denial of Thompson that he received cash (the payment being made by check) it is to be wondered why Thompson did not call his friend, Partin, to the stand to verify his statement. Also, he could have called Mrs. Coxe to whom he allegedly delivered all checks from the Teamsters, but no cash, according to Thompson and the sheriff.

Moreover, I note that the majority opinion states that "The trial judge and the Court of Appeal rejected the Smith woman's testimony and accepted Thompson's version that no money passed from Partin to him, other than checks representing donations by the union to charitable and civic organizations". I have carefully examined the opinions of the trial judge and the Court of Appeal (see 184 So. (2d) 314) and find no ruling by either court rejecting the

verity of Mrs. Smith's evidence.(3)

But, be this as it may, it makes no essential difference whether the payment was made in cash or by check. In either case the affidavit that money had passed between Partin and Thompson is an admitted fact. The only suggested difference is

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3.

The trial judge rested his original opinion on the predicate that the affidavit of Albin was libelous per se. His only reference to Mrs. Smith's testimony is that she stated that money "****was left in an envelope from Mr. Partin to Mr. Thompson and that he picked up the same." As to this, the judge ruled, in effect, that it was immaterial whether the payments were made in cash or by check since all money paid was received "**** purely in connection with drives put on by some charitable institution ***", as avouched by the sheriff and Thompson.

The Court of Appeal recited the substance of Mrs. Smith's testimony but made no finding as to her credibility. Indeed, such a finding would have been superfluous, in view of the court's conclusion that Thompson could not recover under the rulings in the New York Times and the Garrison cases.

that Albin, the author of the affidavit, after relating that Partin withdrew money from the Union funds for his own use and later assertedly arranged for the disappearance of the safe containing the Union records (the accuracy of this part of Albin's affidavit is not challenged), expressed the opinion that, because of Partin's connection with a certain State Trooper, there would be no help obtained from the state police office for an investigation of the irregularities and that probably no assistance would come from the sheriff's office, in view of the close relationship between Partin and the plaintiff, Thompson. If Albin was incorrect in this deduction, this, under the New York Times Co. vs. Sullivan rule, would not have warranted recovery even as to Albin (who, of course, is not a party defendant in this case) because the First Amendment to the Federal Constitution, which delimits by operation of the 14th Amendment the State's right to award damages for civil libels in matters involving public officials, applies only to those matters in which the injured official proves actual malice, i.e., that the publication is made with knowledge that it is false or in reckless disregard of whether it was false or true.

The New York Times rule, as I understand it, authorizes civil libel recovery by public officials for defamatory remarks based on facts known to be false. It does not extend this right of redress to the free expression of opinion, no

matter how erroneous, when such conclusion is drawn from true statements of fact. In other words, in view of the fact that the statement that money had passed from Partin to Thompson is true, the circumstance that Albin might have been mistaken, in implying that the money or check was given for Partin's or the Union's protection by the sheriff's office, would not afford a legal ground for holding the publication actionable. For this was fair comment, however erroneous, based on substantially true facts and to hold otherwise, according to the New York Times case, would unconstitutionally trench upon the right of free speech As was stated in Beauhornais vs. Illinois, 343 U.S. 250, and many times repeated, "*** public men are, as it were, public property" and, in the absence of actual malice, an action for libel may not be maintained. See also Garrison vs. Louisiana, 379 U.S. 64 (1964) and discussion in Time vs. Hill, 87 S. Ct. 534 (1967).

What I have heretofore said would apply only if Albin, the author of the affidavit, was the defendant in this case. But this suit is not against Albin but against St. Amant for publishing the alleged libelous affidavit. Insofar as St. Amant is concerned, the case is exactly parallel with the New York Times decision. Surely St. Amant, having secured an affidavit to the facts set forth therein, can hardly be said to have been actuated by malice toward Thompson. Indeed no proof is shown here that St. Amant

knew that any fact stated in the affidavit was false or that any conclusion drawn from a true fact stated in the affidavit was false.

However the majority opinion, in holding St. Amant liable for damages, deduces that the alleged defamatory remarks concerning Thompson were uttered by St. Amant with "*** a reckless disregard as to whether the statements concerning Thompson were true or not". In reaching this conclusion the majority feels that St. Amant could not rely on the verity of the statements of fact contained in the affidavit; that it was incumbent on him to make an investigating of the truth of the statements before publication and that his failure to do so renders him liable as he necessarily utters the defamatory statement with reckless disregard of its truth or falsity. This pronouncement effectually implies malice for it places ignorance of falsity on a parity with knowledge of falsity and in the same category with actual malice by holding that failure to make an independent investigation of truth constitutes a reckless disregard of truth or falsity. But this is exactly contrary to the view of the United States Supreme Court in the New York Times case.

Under the Times doctrine a qualified privilege extends to misstatements of facts in a publication relating to a public officer if other conditions of a qualified privilege (absence of actual

malice) exists. There, it was held that a statement attacking the official conduct of a public officer does not forfeit the protection of the constitutional guaranty of free speech by the falsity of some of its factual statements and by the alleged defamation of the public official or by a combination of these two elements and that a defense must be allowed for erroneous statements honestly made. The court found that actual malice had not been shown on the part of the signers or sponsors of a newspaper advertisement describing the maltreatment in Alabama of negro students protesting segregation, where there was no evidence whatever that they were aware of any erroneous statements or were in any way reckless in that regard.(4) With respect to the newspaper, it was held that a statement by its secretary that he thought the advertisement was substantially correct afforded no constitutional warrant for inferring actual malice from his ignoring the falsity of the advertisement, where his opinion was at least a reasonable one, and actual malice on the part of the newspaper was not shown by its failure to retract, upon plaintiff's demand, even though it later retracted upon the demand of the Governor of Alabama. It was found that

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4 This holding clearly supports the view I have above stated with regard to the author of the affidavit.

there was no duty on the part of the newspaper to check the accuracy of the defamatory statement against the news stories in its own files which would have shown its falsity. This dereliction on the part of the newspaper was regarded as mere negligence and constitutionally insufficient to show the recklessness that is required for a finding of actual malice.

In the case at bar, the majority opinion places a much greater burden on St. Amant- for the Court implies actual malice, contrary to the New York Times case, by concluding that, because he testified he gave no thought to Thompson, this "*** was reckless error for him to take this position *** a faulty assumption*** in utter disregard of whether the remarks about Thompson were true or false."

In my view, St. Amant was justified in regarding the affidavit of Albin to be accurate. Further inquiry was not essential; the most that can be said is that, perhaps, he was negligent but negligence alone will not support a finding of actual malice.

The judgment of the Court of Appeal should be affirmed.

...o0o...

APPLICATION FOR REHEARING

(Number and title omitted)

Now into Court, through undersigned

counsel, comes HERMAN A. THOMPSON, plaintiff-appellee in the above numbered and entitled cause, who respectfully shows that he is aggrieved by the judgment rendered herein and that said judgment is erroneous for the following reasons:

1.

It is respectfully submitted that the Court erred in finding that plaintiff is a "public official" within the contemplation of the term as used in New York Times Co. v. Sullivan, 376 U S. 254, 84 S.Ct. 710.

2.

It is respectfully submitted that the Court erred in concluding that the defamatory statements concerning the plaintiff were in connection with his "official conduct," as opposed to pertaining to his private character.

3.

It is respectfully submitted that the Court erred in finding that the defamatory statements made were not with "actual malice" within the contemplation of such term as used in New York Times v. Sullivan.

4.

It is respectfully submitted that the Court erred in otherwise applying the rule set forth in

New York Times v. Sullivan to the circumstances of this particular case.

WHEREFORE, plaintiff-appellee prays that a rehearing be granted and that, after due proceedings had, the judgment herein be set aside and annulled and that judgment be rendered in favor of plaintiff at defendant's costs.

By Attorneys:

KLEINPETER & BARNETT

By: s/ Robert L. Kleinpeter
Robert L. Kleinpeter
P.O. Box 66443
Baton Rouge, Louisiana
Attorneys for Plaintiff-Appellee

...oOo...

COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA

Herman A. Thompson No. 6571
vs.
Phil A. St.Amant Parish of East Baton Rouge

On application for rehearing.

Rehearing REFUSED

Baton Rouge, Louisiana, Apr 4 1966

s/ Robert S. Ellis, Jr.

s/ W. Lottinger

s/ Paul B. Landry
Judges

s/ H. R. Reid

s/ Julian Bailes

Filed APR 4 1966

s/
Clerk

A TRUE COPY:
s/ J. Clyde Pearce
Clerk
Court of Appeal, First Circuit
State of Louisiana

Filed Apr 4-1966

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SUPREME COURT, U. S.
517
FILED
AUG 19 1967
JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1967

No. 48,184

PHIL A. ST. AMANT

Petitioner,

versus

HERMAN A. THOMPSON

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

MOSES C. SCHARFF
Whitney Bank Building
New Orleans, Louisiana 70112

RUSSELL J. SCHONEKAS,
GIBSON TUCKER, JR.,
Of Counsel

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 48,184

PHIL A. ST. AMANT

Petitioner,

versus

HERMAN A. THOMPSON

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Phil A. St. Amant, with respect shows unto the Honorable Court as follows:

1.

CITATION TO OFFICIAL REPORT OF OPINION DELIVERED IN THE COURT BELOW.

The opinion rendered by the Court below is reported in 250 La. 405, 196 So.ed 255; and 184 So.2d 314 (La. App. 1st Cir., 1966).

2.

GROUNDS FOR THE COURT'S JURISDICTION

The decree sought to be reviewed was rendered and entered on February 20, 1967, with a refusal of rehearing on March 27, 1967. By motion granted on June 26, 1967, the time for filing this petition was extended to and including August 19, 1967. The jurisdiction of this Honorable Court is invoked under Article III, Section 2, the First and Fourteenth Amendments of the Constitution of the United States, 29 USCA 1257 (3).

3.

QUESTIONS PRESENTED FOR REVIEW

Were certain statements by Petitioner, Phil A. St. Amant, concerning a public official and communicated over a television program made with *actual malice,* i.e., with knowledge, that they were false or in reckless disregard of whether they were false or true, so as to allow recovery by this public official in a civil action for libel and slander?

4.

CONSTITUTIONAL PROVISIONS INVOLVED

a. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble and to petition the Government for a redress of grievances." United States Constitution, First Amendment.

b. ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." United States Constitution, Fourteenth Amendment, Section 1.

MAY IT PLEASE THE COURT:

5.

STATEMENT OF THE CASE

This matter involves a suit for damages by Captain Herman A. Thompson, a deputy sheriff of the Parish of East Baton Rouge, State of Louisiana, against Phil A. St. Amant, who at the time the alleged incident occurred, was a qualified candidate for United States Senator from the State of Louisiana. During his political campaign, petitioner appeared on a Baton Rouge television station and made remarks about the respondent. Copies of petitioner's statement were also made available to the press who publicized them. Thompson alleged in his original petition that these remarks were false, slanderous, libelous and malicious (Record P. 16); that they were intended to belittle, degrade and ridicule respondent Thompson and defame, slander and libel his good name, reputation and character before his friends and the general public. (Record P. 17). Petitioner St. Amant, in his answer, admitted the statements, but claimed that they were

not slanderous and were not made with malice (Record P. 19). In the alternative, St. Amant pleaded the absolute defense of truth of these statements. (Record P. 22). Judgment was rendered in the District Court of the State of Louisiana for Thompson in the sum of five thousand and no/100 ($5,000.00) dollars on May 13, 1964.

The Louisiana Court of Appeals, First Circuit, reversed the trial court's decision and held for the petitioner herein, St. Amant, dismissing his suit. Writs of certiorari and review were applied to and granted by the Supreme Court of Louisiana. On February 20, 1967, the Louisiana Court of Appeal was reversed and the judgment of the trial court was reinstated. Rehearing was denied by the Supreme Court of Louisiana on March 27, 1967 and petitioner, the appellant-defendant, petitions to this Court for a writ of certiorari.

The sole question presented in this request for a writ of certiorari was whether the remarks admittedly made by St. Amant were made with actual malice, i.e., they were made with knowledge of falsity or in reckless disregard of whether they were true or false. The constitutional safeguards of freedom of speech were offered as a defense in light of the recent decision, *New York Times Co. v. Sullivan,* 376 U.S. 254, 84 C.Ct. 710, 11 L.Ed. 2d 686 (1964) (Record P. 37). The trial court refused a new trial, stating that the respondent Thompson was a public official and the rule of actual malice applied to him (Record P. 38). However, in passing on the question, the trial court found actual malice in the statements of petitioner St. Amant

and held him liable (Record P. 39). The Court of Appeal, First Circuit, reversed the trial court, finding that the respondent, Thompson, was a public official (Record P. 49), and the actual malice rule of the *New York Times* case *supra* applies.

Thus the constitutional guarantees of freedom of speech were secured when a public official is criticized in the performance of his office (Record P. 50 and Record P. 52).

The Supreme Court of Louisiana rendered a decision reversing the Louisiana Court of Appeal, First Circuit, and reinstating the trial court on the grounds that the constitutional safeguards of free speech are preserved in a civil action by a public official against his alleged slanderer (Opinion of Supreme Court, P. 9). Applying the New York Times rule, the Louisiana Supreme Court found the actual malice necessary to form the basis of such a suit, and concluded that the First and Fourteenth Amendments do not provide protection in this case (Opinion of the Louisiana Supreme Court P. 14).

ARGUMENT

Since at all levels the courts of Louisiana have concluded that Respondent, Thompson, was a public official, the case falls under the aegis of the New York Times rule of libel. The only disputed fact, and the reason certiorari should be granted, is that these statements made by petitioner were uttered with ac-

tual malice or with reckless disregard of whether they were true or false. It is respectfully submitted that these statements were not made maliciously, and therefore under the public official rule of the *Times* case, the First and Fourteenth Amendments do guarantee the protection and privilege of free speech.

The question can be resolved only by a close examination of the record. Is there actual malice presented or did the Court wrongfully imply it. The statements referred to were in the form of an affidavit executed by one Albin, a local union member, and read by petitioner St. Amant over television. The pertinent parts of the statement are as follows:

> "Now, we knew that this safe was gonna be moved that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson * * * from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police (Opinion of the Louisiana Supreme Court P. 3)."

The facts presented therein were substantially true. Thompson admitted he had been a frequent visitor to

the Union Hall and was a close friend of the labor leader Partin (T.T. P. 61). He did receive certain monies from Partin for various causes (T.T. P. 63), but insisted they were all checks, not cash (T.T. P. 68). He even admitted that the payments, for whatever reason given, were tendered in envelopes, and that he never opened them but brought them in and gave them to the Sheriff's secretary. (T. T. P. 71). Thompson even testified that Partin attempted to give him certain rewards for solving cases around the Union Hall (T. T. P. 66-67), which offer was rejected.

Thus, from the statement that, "We also knew of money that had passed hands between Ed and Herman Thompson . . . from Ed to Herman" (Opinion of Louisiana Supreme Court P. 3), we can conclude from the facts in the testimony that this is a true statement. Monies did change hands, and the distinction made by the Louisiana Supreme Court as to whether it was cash or checks (Opinion of Supreme Court P. 6) seems to be of no relevance. The affidavit merely said money changed hands, and checks are money. The Louisiana Supreme Court counted heavily on Respondent Thompson's testimony, an interested party, and ignored and discounted the testimony of Mrs. Marjorie Ann Smith, a Teamster's secretary and an uninterested party, who stated that she had seen cash pass between Partin and Thompson. (Opinion of Sup. Ct. P. 6-7). There seems to be no reason to disbelieve her testimony. The Supreme Court based this decision on the fact that petitioner St. Amant did not have corroborating testimony from the other secretary who supposedly saw the transfer, one Jeanette Fletcher. (Sup.

Ct. Opinion P. 12). But there seems to be no legal duty on St. Amant to have an abundance of witnesses testifying to the same thing. The situation reduces itself to Thompson saying he received no cash and Mrs. Smith saying he did. Thompson called no one to support his story. He might have called his friend, Partin, but he did not. And yet the Court used this as a basis for dismissing Mrs. Smith's testimony as being untrue. The Court of Appeal and the trial court did not doubt her veracity.

However, the undisputed fact that some type of money did change hands still remains, and in this sense, Albin's affidavit is correct. And so was petitioner's reading on television. As for what purposes this money changed hands is a matter of individual opinions. Albin expresses the opinion that this money that changed hands was union money and that Partin withdrew it for his own use. He also offered that because of Partin's connection with some State Trooper (he mentioned someone else, not Thompson), there would be no assistance from State Police in investigating of union officer activities. Albin concluded that since Partin and Thompson were close friends, no help could be expected from the Sheriff's office, but is must be remembered these are deductions and opinions of Albin, not statements of fact. The only actual truthful fact was the money changing hands. The rest were Albin's own personal deductions and conclusions therefrom. If Albin was incorrect in his deductions and opinions, this, under the *New York Times Co. v. Sullivan* rule, would not have warranted recovery even as to Albin, less St. Amant, since the First Amendment's

free speech, as applied to the States by the Fourteenth, limits a jurisdiction's power to award damages for civil libels in matters involving public officials. Recovery can only be had where the injured official proves actual malice, i.e., the publication is made with knowledge that it is false or in reckless disregard of whether it was false or true. Libel recovery under the *New York Times* rule is authorized by publice officials for defamatory remarks when the remarks are known to be false. But the free expression of opinion by its very nature is believed to be true by the expressor. One can be held libel for wanton disregard for truth, but not for mistaken opinion. The fact that money changed hands being true, the circumstance under which it did change hands, and Albin's implying that the money was for a payoff would not give legal ground for holding the statement actionable. This was opinion and comment, no matter how erroneous, based on fact, and to hold such comment libelous is to deny, according to the *New York Times* case, the constitutional right of free speech. By holding as they did, the Louisiana Supreme Court did indeed do just that.

The analysis applies to Albin, the author of the statement. But St. Amant was the party sued. However, there is no evidence that St. Amant was actuated by malice toward Thompson. He secured a sworn affidavit from a union member about activities which in the opinion of this member; Albin, were shady, to say the least. No proof was shown that petitioner St. Amant knew that any fact stated in the affidavit was false

or that any conclusion drawn from these facts were false.

The opinion of the Louisiana Supreme Court did conclude that St. Amant uttered these statements in a reckless disregard as to whether they were true or false (Sup. Ct. Opinion P. 12). But the Court said this was the mistake for St. Amant. He should have checked more closely the veracity of the statements, and investigated as to the truth of the affidavit. And since he didn't do this before he made the statements on the broadcast, he was recklessly disregarding this truth or falsity and thus malice is imputed resulting in liability. This equates ignorance of falsity with knowledge of falsity and imputes malice from both. This is contrary to the *Times* case.

In *New York Times Co. v. Sullivan,* a qualified privilege is lifted and liability attaches. Erroneous statements, honestly made, about a public official, are protected under the First and Fourteenth Amendments from civil liability. And yet in this case, the Louisiana Supreme Court places a greater burden on the petitioner St. Amant, and *implies* actual malice since he did not satisfactorily check the source of the statement. St. Amant testified that he gave no thought to Thompson when he made his statement (TT P. 126). He read a sworn statement of a third party. The Louisiana Supreme Court interpreted this as being a reckless error needed to impute liability.

It is submitted that at worst for petitioner herein, these were erroneous statements honestly made, and that knowledge of falsity and ignorance of falsity cannot be held to be one and the same.

There is no law or imposed legal duty to check, further than did petitioner, such a statement to avoid malice or recklessness. Failure to check a source may perhaps be considered negligent, but negligence and malice are not synonymous, just as a negligent homicide and murder requiring malice aforethought are not the same.

WHEREFORE, petitioner respectfully prays that this petition be granted and that a writ of certiorari issue, directed to the Supreme Court for the State of Louisiana, commanding that Court to certify and send to this Honorable Court, for its review and determination, a full and complete transcript and record of all proceedings on the cause entitled "Herman A. Thompson versus Phil A. St. Amant" and reverse title, bearing Number 48,184 on the Docket of the Supreme Court for the State of Louisiana, to the end that the judgment and opinion of said Court may be reversed by this Honorable Court and the judgment of the Court of Appeal, First Circuit of the State of Louisiana reinstated herein;

Petitioner further prays for such other and further relief in the premises as this Court may deem proper and just.

Moses C. Scharff
Whitney Bank Building
New Orleans, Louisiana 70112

Russell J. Schonekas
Gibson Tucker, Jr.,
Of Counsel

CERTIFICATE

I, the undersigned, of counsel for petitioner, hereby certify that I have served a copy of the foregoing petition upon Robert L. Kleinpeter, Attorney for respondent, at P. O. Box 2828, Baton Rouge, Louisiana, by mailing a copy thereof, postage prepaid, to him at said address.

Attorney for Petitioner

APPENDIX A

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HERMAN A. THOMPSON	*	NUMBER 88,779
VS.	*	DIVISION "B"
PHIL A. ST. AMANT	*	JUDGMENT

This cause came up for hearing on Tuesday, May 5, 1964 pursuant to regular assignment. PRESENT: Robert L. Kleinpeter, of the firm of Kantrow, Spaht & Kleinpeter, Attorneys for the plaintiff; and, Mr. R. G. Van Buskirk, Attorney for the defendant.

When after reading the pleadings, hearing the evidence, considering the memorandums and authorities submitted by counsel, together with oral argument, and for oral reasons assigned, the law and evidence being in favor thereof:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the plaintiff, Herman A. Thompson, and against the defendant, Phil A. St. Amant, in the full and true sum of Five Thousand and No/100 ($5,000.00) Dollars, together with interest thereon at the legal rate from date of judicial demand until paid and all cost of Court.

JUDGMENT RENDERED in Open Court on the 5th day of May, 1964.

JUDGMENT READ AND SIGNED in Open Court on the 13th day of May, 1964.

(Signed) Fred A. Blanche, Jr.
JUDGE,
Nineteenth Judicial
District Court

Filed May 13, 1964

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HERMAN A. THOMPSON	*	NUMBER 88,779
VS.	*	DIVISION 'B"
PHIL A. ST. AMANT		

REASONS FOR JUDGMENT

The law with reference to libel and slander is that any publication, whether in writing, on television, radio, or in pictures or otherwise, which exposes any person to hatred, contempt, ridicule or which causes him to be shunned or which has a tendency to injure him in his reputation or occupation is a libelous statement. That has been our law and was recently stated in the case of *Miller, Smith & Champagne, et al v. Capital City Press,* 142 So. 2d 462, but that is a hornbook law definition of libel and slander. The foundation of the law of libel and slander is the protection of a person's

reputation, and as stated in *Kennedy v. Item Co.*, 213 La. 347, 34 So. 2d 886, the right to a good name and fame is absolute and is as essential to the pursuit of happiness as is the right to life, liberty and property.

The test of whether a statement is libelous is set forth in *Madison v. Bolton*, 234 La. 97, 102 So. 2d 433, that the test of a libelous article is the effect the article is fairly calculated to produce, the impression it would naturally engender in the minds of the average persons among whom it is intended to circulate. As has been pointed out here, some statements are privileged when they involve public officials, and I believe the law stated by Mr. Van Buskirk with regard to its application to public officials was correct. Public officials are fair game, so to speak, but statements with regard to them are only actionable as being libelous when it can be shown that the maker of such a statement acted with malice, and that must be particularly alleged and proved.

The case of *Smith v. Lyons*, 142 La. 975, 77 So. 896, with regard to the question of damages, and others there cited, are to the effect that when one falsely accuses any person of being dishonest, a liar, being fraudulent, or of having unworthy motives, or to impute the same by insinuations or innuendo, such action renders the individual publishing the same responsible for the consequences. In such instances the law implies malice and will award substantial damages without the showing of any special damages. Of course, a defense to any such libelous statement would be the truth. It is not libelous to make statements about an-

other person or accuse him of being dishonest or accuse him of having unworthy motives which reflect on his character if they are true, but the one who makes such statements also has the burden of proving the truthfulness of the same.

I have gone over the statement again, the statement made by Mr. J. D. Albin in his affidavit and repeated by Mr. St. Amant in his speech on WAFB-TV as follows: "We knew something had to be done if we were to ever straighten out the local union, and the onliest way to straighten it out was the removal of E. G. Partin." Prior to this statement, many statements had been made in the speech with reference to Mr. Ed Partin, business agent of the Teamsters Union, accusing him of such things as trafficking with the Castros in Cuba, being a criminal, in fact, referring to his rap sheet and criminal convictions, and also Mr. St. Amant in his speech and through Albin's affidavit painted Partin as abusive of these particular members in the union, abusive of the membership in the union, mishandling union funds, committing murder, and possibly other dishonest motives and acts which escape my memory. However, considering the whole tenor of the speech, I got the idea that Mr. Partin was a crook of the highest order. Following these remarks quoted by Mr. St. Amant, Mr. Albin stated that certain efforts were made by them to get help or relief from Mr. Partin, and they had gone to Washington to ask James Hoffa to aid them, and as a result of their efforts Mr. Partin had good reason to expect that an investigation of the union was imminent. The affidavit further reflects that they had received knowledge that Mr. Partin was

going to remove the safe from the union hall, and as a person of average intelligence, I would draw the inference that Mr. Partin would only do this in order to hide any wrongdoing on his part with regard to his handling of union funds or otherwise; and he therefore had to get rid of the safe. The affidavit goes on to show how they had thought about what action they could take to prevent this, and it occurred to them that perhaps they should call the law, but that they were afraid to call the law, especially the Sheriff's office, because they knew of Captain Thompson's connections with Ed Partin, that they had known that money had passed hands, and the inference that I got was that this statement tended to impute some dishonest motive to Captain Thompson such as taking a payoff from Ed Partin. It also insinuated and inferred that he, Thompson, rather than do his duty and enforce the law or help them prevent the commission of a crime might aid and abet the wrongdoer Mr. Ed Partin since Partin had connections with Thompson. The statement did not infer, it charged that they should not go to him because if they did they would not get any help and did not know how far he was involved in the Sheriff's office or State Police office. There is no doubt in my mind that a person of average intelligence hearing that speech would figure that Captain Herman Thompson was in cahoots with Ed Partin, especially after all of these other dishonest motives and accusations made as to Mr. Ed Partin just previously thereto and then linking Mr. Thompson's name in the fashion stated. It couldn't help but imply to the average person that Captain Thompson was involved with Partin in a dishonest way.

I heard from Mr. St. Amant today that he intended no malice toward Captain Thompson. He was in a political fight with Senator Russell Long, that it was true that money had passed between Ed Partin and Captain Thompson, and that he had also been out at the Union Hall, and that Partin and Thompson addressed each other by their first names. All of this was also admitted by the plaintiff. Plaintiff has stated that he had plenty of business at the Union Hall, but the same was in connection with burglaries or union activities involving strikes which made it necessary for him to confer with Mr. Partin from time to time. Mrs. Smith, Mr. Partin's secretary, stated that money was left in an envelope from Mr. Partin to Mr. Thompson and that he picked up the same. The Sheriff testified and so did Mr. Thompson that any money that he received from Mr. Partin was purely in connection with drives put on by some charitable institution such as the Baseball Clinic, Elks Club or other charitable drives, and that any money that he ever received from him was solely for that purpose and was turned over to the Sheriff's receptionist who would account for the same.

Even though Mr. St. Amant states that he did not intend to impute any dishonest motives to Mr. Thompson and did not intend to injure or hurt him in his reputation, nevertheless, the fair inference to be drawn by what was stated to the average person had that exact effect.

Having already held that the statement itself inferred and attributed to Mr. Thompson dishonesty, such statements are under our law injurious per se

unless the truth of the accusation is proved. The only proof that this Court has is the fact that the money did pass, which was freely admitted by the plaintiff, and that is not sufficient evidence to attach any dishonest motive to Captain Thompson in view of the other testimony by him and as well as possibly the admissions of the defendant himself that he intended to attribute no dishonest motive to him; but nevertheless, that mere fact of receiving that money is not proof of dishonesty on his part. It is not proof of his taking a payoff, nor proof that because of his connections with Partin he would not do his duty as a law officer. Proof of those charges, which are implicit in the language of the statement, would be his only defense under our law.

I know of nothing more important to a police officer, or for that matter to any man, than his reputation. I know it is more important than money. The natural experiences of life teaches that regardless of a man's wealth, it never takes the place of his good reputation and character. It is especially so of police officers, for there is nothing as vile to our system of justice as the belief that our police are dishonest. They are to enforce the law, and their professional reputation depends a great deal on their honesty and integrity. Of course, it is hard to show how far such a statement has injured Captain Thompson. Captain Thompson, as far as the Court knows and from listening to the Sheriff and others, has a fine reputation, but the statement was circulated all over the parish to many, many persons who have no knowledge of Captain Thompson, and as Shakespeare said, "The bad that men do lives after them and the good is oft interred with their bones." The

public will often not remember good things about people but remembers the bad things that have been said about them, and it is not unreasonable to assume that if Captain Thompson's name is discussed among the general public that it could be associated with taking some payoff from Ed Partin, the Teamsters' agent, and that these union members were afraid to go to the police because they know of Ed Partin's and Captain Thompson's connection. They will remember that long after they have forgotten how much education he has as a law officer, long after they have forgotten that he was a graduate of the F. B. I. School. Long after his many faithful years of service in the Sheriff's office, they will remember that.

It is my opinion that to have made a speech outlining in detail and charging Ed Partin with such great criminal activity and then to link Partin and Captain Thompson together with a statement that money had passed hands between them is a statement which is libelous per se. I was interested in Mr. Van Buskirk's remarks that they were not and the reasons why they were not, but I wonder, Mr. Van Buskirk, what you would think if someone would reflect on your honesty as a lawyer in such a publication. You could have been a good lawyer, which you are, for years, and yet you would be put up to public ridicule and contempt, and damage would result not only to your reputation but indeed to your business, and if the same were not true and if the defendant could not prove it is true, I know that you should feel that you were damaged.

I was looking at the case of *Deshotel v. Thistleth-*

waite, 240 La. 12, 121 So. 2d 222. I don't know what would be the more injurious to reputation, I don't know whether it would be more injurious to be referred to as a coward or whether it would be more injurious to be referred to as a thief or a dishonest officer of the law.

On that point and with regard to what you stated about Section 315 of the Federal Communications Act, it is my opinion that that act does not apply to Captain Thompson because I do not believe him to be a public official, though I know he is a public employee, like Mrs. Dobbs, my clerk, and countless others that we have enforcing the law, but I do not think that was intended to apply to other than public officials. If I am wrong about that, you will have to straighten me out, because if he is a public officer, so to speak, then the rules may be entirely different.

While not in evidence and having nothing to do with the case, while I was listening to the testimony, I have remembered that I had run out of money and needed some and had borrowed some money from a lawyer who had a case in my court. I gave it no thought, we were and had been friends, just as I am and have been with practically every member of the bar. I was just thinking to myself how that would look out in print or on T. V. I don't know whether the lawyer won or lost his case. I can't recall it, but I remember that I was out of money and rather than cash a check, I got it from him. I have no idea whether he won or lost the case or what case it may have been, but I sure realize the impropriety of it and what it could have done to

me. I certainly had no dishonest motive. I just forgot to cash a check and borrowed money from a friend, which all of you lawyers are to me, and I can see right now that if somebody got on T. V. and put it out that money had passed between me and the lawyer and he had won the case, I really would have been in a fix. The more I would have tried to explain it, the worse it would have gotten.

Mr. Thompson states he gets money for a contribution to a charity, and, of course, to those people there money was passing hands between him and Ed Partin. Yet, I know unions, management and everybody else contributes to those drives. Dishonest motives can be attributed to an entirely innocent act. I will tell you one thing, from now on, if I run out of money, I am going to borrow money from the bank or go find a place to cash a check or do without.

This brings up the amount of the award, and that is the hardest thing about being a judge, to determine what is a fair award. If I am not mistaken, where the damages are libelous per se and are of such a nature as to injure and degrade the character of a person, malice is inferred. While the damages are not punitive, the Court can only in its discretion make an award which I believe may at the best be arbitrary. Like I said before, I don't know who is talking about Captain Herman Thompson and believes he and Ed Partin are crooks together, and there is no way of knowing, except to say that if you are a lawyer and you get written up as being dishonest or you are a policeman and the inference from the remarks made is that you

are not honest or would engage in some conspiracy, you just cannot recover from that without some damage, because I believe people remember bad things about you for a long, long time. Also, I don't know, it is not in evidence, and I only know this by hearsay, but I don't know what Mr. St. Amant makes. I know he is a retired Army officer. You have to balance that also against Captain Thompson and the damage to his reputation. I don't think that he has been harmed insofar as any monetary loss is concerned. His employers think as much of him today as they did at the date of this speech. He has lost no money. If I was fooling with WAFB-TV or with the Item Publishing Company, as in the Kennedy case and others, the award would be considerably higher than I am going to give.

I fix the award in favor of Captain Thompson and against Mr. St. Amant at the sum of $5,000.00.

Mr. Van Buskirk, we will furnish you with all of my remarks made in court today, and I will hold Mr. Kleinpeter off, and I know that he will do so voluntarily, from getting the judgment signed until you can examine them, and if you have any other argument that you wish to make and have found me incorrect in the law in any way, then you will have that opportunity.

I will sign a judgment accordingly in favor of plaintiff as stated.

Baton Rouge, Louisiana, this 8th day of May, 1964.

/s/ Fred A. Blanche, Jr.
JUDGE, 19TH JUDICIAL
DISTRICT COURT

APPENDIX B

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HERMAN A. THOMPSON	*	NUMBER 88,779
VS.	*	DIVISION "B"
PHIL A. ST. AMANT	*	JUDGMENT

This cause came up for hearing upon a motion for a new trial filed herein by the defendant praying that the judgment signed herein on May 13, 1964 be set aside and that a new trial be granted. When, after reading the pleadings, the written memorandum for plaintiff and defendant, and for written reasons assigned, the law and evidence being in favor thereof:

IT IS ORDERED, ADJUDGED AND DECREED that the motion for a new trial filed on behalf of the defendant be denied and that the judgment signed herein on May 13, 1964 be and it is hereby made the judgment of this Court as originally rendered.

JUDGMENT RENDERED in Open Court on the 22nd day of January, 1965.

JUDGMENT READ AND SIGNED in Open Court on the 27th day of January, 1965.

/s/ FRED A. BLANCHE, JR.
JUDGE,
19th Judicial District Court

HERMAN A. THOMPSON	NUMBER 88,779,
VS.	DIVISION "B"
PHIL A. ST. AMANT	19TH JUDICIAL
	DISTRICT COURT
	PARISH OF EAST
	BATON ROUGE
	STATE OF
	LOUISIANA

REASONS FOR JUDGMENT

The Court rendered oral reasons for judgment in favor of the plaintiff in the sum of $5,000.00 on a finding that defendant had libeled plaintiff in a political address which was subsequently printed and distributed by the defendant. The Court has no misgivings about its decision that the remarks made by defendant were libelous but has entertained the motion for a new trial to consider the case in the light of the holding by the United States Supreme Court in the case

of *New York Times Company v. Sullivan*, 84 S. Ct. 710 (1964). That case held that:

> "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' — that is, with knowledge that it was . . . false or with reckless disregard of whether it was false or not."

Therefore, in light of the above quoted case, an inquiry into (1) whether or not the plaintiff is a public official and (2) whether the statement made by defendant was made with "actual malice" — that is, with knowledge that it was false or with disregard of whether it was false or not is pertinent to a decision in this case.

The case of *State v. Mayeux*, 81 So. 2d 426, had considered the status of a deputy sheriff such as the plaintiff Captain Thompson:

> "A deputy sheriff is a state officer created by the Legislature and his appointment is provided for in LSA—R.S. 33:1433. Williams v. Guerre, 182 La. 745, 162 So. 609, and the authorities cited therein."

In *Gray v. De Bretton*, 188 So. 722, 724 (1939), further reference to a deputy sheriff as a public officer is made in the following language:

> "The relation between a sheriff and his deputy is an official and not a private relation. *The deputy is not a representative of the sheriff in his individual capacity, but he is a public officer whose authority and duty are regulated by law.* As to the public, whose servants these officers are, the acts and omissions of a deputy sheriff are the acts and omissions of the sheriff himself." (Emphasis added)

Further evidence that he is a public officer is found in the fact that Article 19, Section 1, of the Constitution of 1921 provides that "All officers . . . shall take the following oath or affirmation . . .," and R.S. 33:1433 under the title of "Public Officers" provides for the office of deputy sheriff and requires the taking of the oath and for the filing of a bond.

Having found plaintiff to be a public officer, the rule enunciated in *New York Times Company v. Sullivan, supra,* is applicable, namely, that malice may not be implied in the case of a public official (officer) and that actual malice must be shown, that is, with knowledge that it (the statement) was false or "with disregard of whether it was false or not."

Previously, the Court in its oral decision from the bench applied the Louisiana Law which was just recently stated in the case of *Lamartiniere v. Daigrepont,* 168 So. 2d 373 (October 27, 1964), La. App. 3rd Cir.:

> ". . . the defendant states, as a witness, that he entertained neither malice nor ill will against the plaintiff at the time it was uttered; yet, in such case, the law imputes malice to the act, on account of its character, for the use of opprobrious epithets implies malice when they are slanderous per se. It suffices to maintain an action to recover damages without proving special injury to the party defamed."

Thus, the Court's decision cannot stand on the basis that malice may be implied by the mere character of the statement in light of its holding that plaintiff is a public official, and that brings us to the final question of whether under the federal rule as enunciated in *New York Times Company v. Sullivan (supra)* the plaintiff has shown actual malice.

Mr. St. Amant stated that he intended no malice toward Captain Thompson, that he was in a political fight with Senator Russell Long and had no interest in Captain Thompson. In reply to a question by plaintiff's counsel as to whether he gave any consideration to what effect the statement in the affidavit of Mr. Albin would have on Captain Thompson, he replied that Captain Thompson was not even in his mind. He further testified that he did not consider that Captain Thompson would be harmed by the statement and that he did not know what the money was for and that for all he knew the same could have been for Thompson's favorite charity. Finally, he admitted that as far as he was concerned he would let the public draw what-

ever inference it liked with regard to his reference to Captain Thompson.

Therefore, if Mr. St. Amant did not even know Captain Thompson or have any interest in him, and if he did not know what the money was for, which is evidence that he made no attempt to investigate whether there was any relationship between Mr. Partin and Captain Thompson, to justify his charge that Captain Thompson was being paid off, and if he never gave any consideration as to what effect those remarks might have on Captain Thompson's reputation and character and was content to let the public draw whatever inference it desired concerning these remarks, then fairness dictates that despite defendant's avowed absence of ill will toward Captain Thompson or intent to do him harm or damage, he acted with reckless and wanton disregard for whether the statement was false or not and in the language of the Sullivan case "with disregard of whether it (the statement) was false or not."

The Court is satisfied that its original opinion was correct, and for the reasons here stated the motion for a new trial is denied and judgment will be signed in favor of the plaintiff as originally rendered herein.

Baton Rouge, Louisiana, this 22nd day of January, 1965.

/s/ Fred A. Blanche, Jr.
JUDGE,
19TH JUDICIAL
DISTRICT COURT

APPENDIX C

COURT OF APPEAL
FIRST CIRCUIT
STATE OF LOUISIANA

Feb. 28, 1966

HERMAN A. THOMPSON :
VS. : NUMBER 6571
PHIL A. ST. AMANT :

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT, WITHIN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, HONORABLE FRED A. BLANCHE, JR., JUDGE PRESIDING.

Before ELLIS, LOTTINGER, LANDRY, REID, and BAILES, JJ.

REID, J.

Plaintiff in this action, Captain Herman A. Thompson of the East Baton Rouge Parish Sheriff's Department, alleges he was libeled and slandered by the defendant, Phil A. St. Amant, in a television address made by the defendant and a subsequent printed news release prepared by the defendant.

The case was tried on May 5, 1964 and for written reasons assigned May 8, 1964, judgment was rendered against the defendant awarding the plaintiff the sum of $5,000 damages. Judgment was signed May 13, 1964. A motion for a new trial was filed May 18, 1964, and for written reasons assigned January 22, 1965, judgment was signed January 27, 1965 denying the motion for new trial and decreeing the judgment of May 13, 1964 the judgment of the District Court as originally rendered. It is from that judgment that defendant has lodged this appeal.

The undisputed facts of this case show that the defendant, Phil A. St. Amant, had qualified as a candidate for United States Senator against the incumbent, Senator Russell E. Long, in the Democratic Primary of 1962, and on June 27, 1962, the defendant made an appearance on WAFB-TV, Channel 9, Baton Rouge, Louisiana, during which certain remarks were made about the plaintiff. The general context of the speech was made available to the press and given wide publicity by the press.

The record shows that the political method used in this particular instance was one so frequently used, that is, to allege certain wrongdoings on the part of one individual or group of individuals and then allege a connection between that individual or group of individuals and a politician. In the present case it was sought to show a connection between Senator Long and one E. G. Partin, local leader of the Teamsters Union who was accused of all sorts of wrongdoings.

Insofar as the record here is concerned, the alleged slanderous and libelous material is contained in an affidavit by a Mr. J. D. Albin, an ex-member of the Teamsters Union, which was read by the defendant Mr. St. Amant during his television program. It appears that while the television station would be protected from statements made by Mr. St. Amant as a political candidate under the equal time provision of the Rules of the Federal Communications Commission, it would not be protected from statements made by Mr. Albin if those statements were made by St. Amant over the television. For that reason the television station personnel required that the defendant read the entire affidavit, which was in the form of questions and answers. The affidavit by Mr. Albin was most broad in its accusations of various acts of commission and omission on the part of Mr. E. G. Partin, including his being involved or connected with Fidel and Raoul Castro, his misuse of Union funds, and his committing various acts of violence. It barely mentioned Mr. St. Amant's opponent. That portion of the affidavit which plaintiff contends was slanderous is set forth below:

"Mr. Albin:

> Yes, Frank L. Doughty on March 21st, wrote a letter to Arthur Goldberg with a copy being sent to James R. Hoffa, asking for an investigation of Teamsters Local Union #5. On the 25th, Frank L. Doughty received a reply from James R. Hoffa asking for information, any and all information concerning these charges. On Monday morning, Frank L. Doughty, which was the 27th of March, he

mailed this information to Jimmy Hoffa. Later in the day, I found out Ed had, in the letter coming from Hoffa, it said on the bottom of it a notation, copies sent to Teamsters Local Union #5. Now Ed received this copy on Monday. He became pretty riled up about it and in the afternoon, A. G. Kline, who was still working at that time as an assistant and an organizer for Local Teamsters Union #5, told me that Johnny Birch had stopped him on the Airline Highway and told him Ed wanted him to help him get rid of the safe that night, that there was going to be an investigation of the local union and the records had to be destroyed and it was going to take four men to do it. He told him who all was supposed to be in on it and that they were supposed to take it to Bruce Hunt's shop. That is the man that owns Triple A construction, and cut it open that night, that it had been okayed with Bruce. Kline didn't want to be involved in this so he got his brother in New Orleans to send him a telegram so he could get out and still stay in Ed's good graces, because at this time, we still felt that there was further information that could be derived from his employment in Teamsters #5 and we knew something had to be done if we were ever to straighten out the local union. The only way to straighten it out was the removal of E. G. Partin. Now we knew that this safe was going to be removed that night. *Imagine our predicament knowing of Ed's connection with the sheriff's office*

through Herman Thompson who made recent visits to the hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson, from Ed to Herman. We also knew of his connections with State Lieutenant Trooper Joe Green. We knew we couldn't get any help from there and we didn't know how far he was involved in the sheriff's office or the State Police office through that and it was out of the jurisdiction of the City Police. (Emphasis by the Court)

"Col. St. Amant:

What did you do then?

"Mr. Albin:

Well, we rode around awhile trying to decide what to do. Finally, we decided that we would go to the hall ourselves and see if there was any way we could stop them if we saw them coming out with the safe. We arrived a little too late, somewhere in the neighborhood of 9:00, the safe was gone. The next morning there was an investigation. Brother Herman Thompson came out and investigated and I understand that Lieutenant Joe Green showed up. They seemed to think it was a job by a professional. I agree with them."

The above quoted portion contains the sole reference upon which plaintiff's case is based.

In the Trial Judge's original reasons for judgment and in the briefs filed by counsel for plaintiff and for

defendant much jurisprudence is cited and there is a great deal of discussion as to what does or does not constitute actionable libel or slander. However, since the rendition by the Supreme Court of the United States in the case of *New York Times Company v. Sullivan*, 376 U. S. 254, 84 S.Ct. 710, and in *Garrison v. State of Louisiana*, 279 U. S. 64, 85 S.Ct. 209, most of what was discussed is now moot and of no relevancy.

Before discussing the effects of the above cited decisions on actions of libel and slander in Louisiana, we feel we should point out certain factual matters, some contested and some uncontested, which are relevant to the issues herein and which will determine whether or not the issues in this case fall within the rule laid down by the United States Supreme Court in the recent decisions cited above.

It is undisputed that the plaintiff, Herman A. Thompson, is a well qualified, experienced law enforcement officer, having graduated from the F.B.I. National Academy, Southern Police Institute of Louisville, Kentucky, and is also a graduate of all phases of the Louisiana State University's law enforcement training program and of the East Baton Rouge Parish Sheriff's Department's own training school. He has the complete confidence of his employer, Sheriff Bryan Clemmons. Sheriff Clemmons testified that it was part of plaintiff's duties to participate in various fund-raising drives for East Baton Rouge Parish, including the Baton Rouge Kids' Baseball Clinic, the Mothers' March, March of Dimes, Elk's Christmas Funds Baskets, and others.

The undisputed facts also show that the plaintiff, Herman A. Thompson, was acquainted with the said E. G. Partin; that they were on first name basis; and that plaintiff was a frequent visitor the Union Hall. Captain Thompson admitted this in his testimony:

"Q. Isn't it true that you were a rather frequent visitor at the Union Hall and used to drop in once a week or maybe every ten days:
A. That's right.
Q. To pass the time of day?
A. To pass the time of day and just to talk to the two secretaries, to use the phone and different things like that."

He also admitted that he collected charitable contributions from Ed Partin for the Baton Rouge Kids' Baseball Clinic.

With regard to the stolen safe referred to in the quoted portion of the affidavit, the plaintiff testified that he investigated the matter with Chief Criminal Deputy George LeBlanc, who made the report, and that the Crime Lab from the State Police also assisted, and he added: "I will have to admit that there was not as much effort put out as should have been for the simple reason the night before someone had burglarized Food Town of over fifteen thousand dollars and a lot of drugs were involved and it had everyone of us tied up on that."

Both the plaintiff and Sheriff Clemmons admitted that various members of the Union might be aware that Mr. Partin on occasion gave Mr. Thompson money for some purposes, and while they both insisted that these funds were charitable contributions collected by the plaintiff for the Sheriff's office to be distributed to the proper charities, it is not inconceivable that some union members might have been suspicious of this exchange of funds.

Mrs. Marjorie Ann Smith was called as a witness in behalf of the defendant. She had been employed as a secretary for Teamsters Local No. 5 from September of 1958 to August of 1961. She testified that the latter part of February or the first part of March, 1961, she received instructions from Mr. Ed Partin and "called Mr. Herman Thompson at the Sheriff's office and he wasn't in, so I left word for him to call the Union, that we had something down there for him, and he was gone on a fishing trip and so a couple of days later Mr. Thompson came by the Union Hall and he said he wanted to pick up the envelope, and so Jeanette handed it to him out of her desk drawer and he folded it and put it in his pocket." She further testified that before Captain Thompson came to pick up the envelope she and Jeanette, another secretary working with her, opened the envelope and found that it contained five twenty dollar bills. She was asked what they did after they opened the envelope and she said:

"A. We put it in another envelope and sealed it up.

Q. Now, what type of an envelope was it in,

Mrs. Smith, in the first place?

A. It was a legal size envelope, one of the Teamsters', with the Teamsters' emblem and address on it.

Q. Was it addressed to anyone?

A. It just had Herman Thompson's name on the front of the envelope.

Q. Are you familiar with the handwriting in which the name 'Herman Thompson' was written?

A. Yes, sir, it was Mr. Partin's."

When asked what prompted them to open the envelope she said they knew Mr. Partin was under investigation and they were just wondering what was in the envelope. She could not, however, remember whether she ever reported this incident to the law enforcement officers and said "I have been before the Federal Grand Jury and I can't remember if that was brought out or not." She also admitted that she knew Captain Thompson had picked up some checks for Kids' Baseball; that it was not unusual for Mr. Partin to give money for all the major campaigns in the area, but that this was the first cash she had ever seen. She said Captain Thompson came by the Union Hall more frequently than other officers, usually while on duty and dressed in a suit, but sometimes when he was off duty and dressed in casual clothes and that sometimes he brought his little boy with him.

The testimony of the defendant, Mr. St. Amant, is, of course, also relevant and we quote below the pertinent portion thereof:

"Q. Now, sir, at the time you made your speech, did you give any consideration whatsoever or anything at all to what effects the reference to Captain Herman Thompson's name in this speech might have upon him?

A. Actually, when the original tape was made, and understand that when I read the affidavit I did not feel that I had any right to read parts of an affidavit or to just take sections from it. I do not understand the law on this, but I believe if I am going to give a document or affidavit, I should give the whole thing, and as I asked the question, I never mentioned the name of Herman Thompson. Herman Thompson wasn't even in my mind. I didn't even ask anything concerning the Sheriff's office. I asked quite an entirely different question, as you will see from the transcript, and out of this came a long story in which Mr. Thompson's name was used as explanation of why he felt there was a close personal relationship there that would keep him from going to the Sheriff's office. I neither elicited his name nor did I anticipate his name. Now, when I read the affidavit, I knew the name was in there and I did not consider that this was going to do anything to Mr. Thompson. In fact, I believe it has not. He was a Captain and is a Captain. I don't believe he has been suspended for five minutes and I don't believe he has lost any pay.

Q. Mr. St. Amant, with that knowledge and knowing that this reference to Captain Thompson was in this speech, you then permitted this very speech that we have listened to to be transcribed and circulated to the members of the press?

A. I certainly did. I don't know what this money was for, Mr. Attorney. I did not suggest what the money was for, nor has—did Mr. Albin suggest what it was for. This could have been for his favorite charity for all I know, but as Mr. Albin explains, he couldn't go to him because he was contributing to this man, for whatever purpose. A close personal relationship existed.

* * * *

Q. So you left, you made the remarks, and left the inferences for the public to draw what they might, is that right?

"A. I made the remark and let the public draw the conclusion that they might from the remark, which I believe was properly made at the time. I think you will find that Mr. Thompson's name, except from in quoting Mr. Albin, was never mentioned by me and no inference was drawn by me in further questioning that followed this. I had no interest at the time in Mr. Thompson. I had interest in Senator Russell Long, and I wanted to establish that here is a man in the public eye in a most disrep-

utable fashion, and I am sure Mr. Thompson did not think I was speaking of him. I was speaking of the business agent who was notoriously in trouble at the time and was being helped out by a United States Senator to the detriment of his men, to the detriment of the working people of this parish. I believe this was true and I presented it as such. I have had no suits or opposition on this score from anybody else.

Q. In other words, Mr. St. Amant, you were after the big shot, so to speak, Senator Russell Long, and were not worried about the smaller individual, so to speak, that might have been involved down the way, is that correct?

A. Let's not draw an inference from my answer on that. I was not concerned with them. I did not think it concerned them."

It is clear that the Trial Judge was aware of the effect of the New York Times decision, supra, upon actions of this type for he granted a rehearing in order to consider the effect of that case upon the case at issue. The Garrison case, supra, was decided after the New York Times decision and was not considered by the Trial Judge in his reasons for judgment on rehearing. Although the Garrison case dealt with the Louisiana defamation statute, LSA-R.S. 14:47, it is also most relevant to the case at issue for in the Garrison case the rule of the New York Times case on libel was applied to the Louisiana statute and the comments

and explanations of the rule in the Garrison case are therefore relevant to the case at issue since it is clear from a reading of both cases that the rule for libel in cases regarding a public official's conduct is the same whether it be civil libel or criminal libel.

We quote below the Trial Judge's Reasons for Judgment on rehearing:

> "The Court rendered oral reasons for judgment in favor of the plaintiff in the sum of $5,000.00 on a finding that defendant had libeled plaintiff in a political address which was subsequently printed and distributed by the defendant. The Court has no misgivings about its decision that the remarks made by defendant were libelous but has entertained the motion for a new trial to consider the case in the light of the holding by the United States Supreme Court in the case of *New York Times Company v. Sullivan*, 84 S. Ct. 710 (1964). That case held that:
>
> > " 'The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was . . . false or with reckless disregard of whether it was false or not.'

"Therefore, in light of the above quoted case, an inquiry into (1) whether or not the plaintiff is a public official and (2) whether the statement made by defendant was made with 'actual malice'—that is, with knowledge that it was false or with disregard of whether it was false or not is pertinent to a decision in this case.

"The case of *State v. Mayeux*, 81 So. 2d 426, had considered the status of a deputy sheriff such as the plaintiff Captain Thompson:

> 'A deputy sheriff is a state officer created by the Legislature and his appointment is provided for in LSA-R.S. 33:1433. Williams v. Guerre, 182 La. 745, 162 So. 609, and the authorities cited therein.'

"In *Gray v. De Bretton*, 188 So. 722, 724 (1939), further reference to a deputy sheriff as a public officer is made in the following language:

> " 'The relation between a sheriff and his deputy is an official and not a private relation. *The deputy is not a representative of the sheriff in his individual capacity, but he is a public officer whose authority and duty are regulated by law.* As to the public, whose servants these officers are, the acts and omissions of a deputy sheriff are the acts and omissions of the sheriff himself.' (Emphasis by the Trial Judge)

"Further evidence that he is a public officer is found in the fact that Article 19, Section 1, of the Constitution of 1921 provides that 'All officers . . . shall take the following oath or affirmation . . . ,'' and R. S. 33:1433 under the title of 'Public Officers' provides for the office of deputy sheriff and requires the taking of the oath and for the filing of a bond.

"Having found plaintiff to be a public officer, the rule enunciated in *New York Times Company v. Sullivan, supra,* is applicable, namely, that malice may not be implied in the case of a public official (officer) and that actual malice must be shown, that is, with knowledge that it (the statement) was false or 'with disregard of whether it was false or not.'

"Previously, the Court in its oral decision from the bench applied the Louisiana law which was just recently stated in the case of *Lamartiniere v. Daigrepont,* 168 So.2d 73 (October 27, 1964), La. App. 3rd Cir.:

> " '. . . the defendant states, as a witness, that he entertained neither malice nor ill will against the plaintiff at the time it was uttered; yet, in such case, the law imputes malice to the act, on account of its character, for the use of opprobrious epithets implies malice when they are slanderous per se. It suffices to maintain an action to

recover damages without proving special injury to the party defamed.'

"Thus, the Court's decision cannot stand on the basis that malice may be implied by the mere character of the statement in light of its holding that plaintiff is a public official, and that brings us to the final question of whether under the federal rule as enunciated in *New York Times Company v. Sullivan (supra)* the plaintiff has shown actual malice.

"Mr. St. Amant stated that he intended no malice toward Captain Thompson, that he was in a political fight with Senator Russell Long and had no interest in Captain Thompson. In reply to a question by plaintiff's counsel as to whether he gave any consideration to what effect the statement in the affidavit of Mr. Albin would have on Captain Thompson, he replied that Captain Thompson was not even in his mind. He further testified that he did not consider that Captain Thompson would be harmed by the statement and that he did not know what the money was for and that for all he knew the same could have been for Thompson's favorite charity. Finally, he admitted that as far as he was concerned he would let the public draw whatever inference it liked with regard to his reference to Captain Thompson.

"Therefore, it Mr. St. Amant did not even know Captain Thompson or have any interest in him, and if he did not know what the money was for, which is evidence that he made no attempt to investigate whether there was any relationship between Mr. Partin and Captain Thompson, to justify his charge that Captain Thompson was being paid off, and if he never gave any consideration as to what effect those remarks might have on Captain Thompson's reputation and character and was content to let the public draw whatever inference it desired concerning these remarks, then fairness dictates that despite defendant's avowed absence of ill will toward Captain Thompson or intent to do him harm or damage, he acted with reckless and wanton disregard for whether the statement was false or not and in the language of the Sullivan case 'with disregard of whether it (the statement) was false or not.'

"The Court is satisfied that its original opinion was correct, and for the reasons here stated the motion for a new trial is denied and judgment will be signed in favor of the plaintiff as originally rendered herein."

We feel that the definition of a public official as set forth in the Judge's reasons for judgment on rehearing clearly answers the question as to whether or not the plaintiff is or is not a public official, and therefore the plaintiff's contention, as set forth in his brief,

that he is not a public official has no merit, and the rule of the New York Times case does apply to plaintiff. We make this statement fully aware that in footnote 23 in the New York Times decision the Court said: "We have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included." Nor do we agree with the contention that as the Court in the New York Times case did not define official conduct, that the conduct herein was not official but of an extracurricular activity, that is, soliciting money for civic charities. This position is also without merit because it is not that conduct which is criticized in the affidavit. The affidavit deals with the fears of the affiant concerning the manner in which the plaintiff would or would not discharge his duties if the mentioned safe was stolen. It is the relationship of Mr. Partin and the plaintiff in his official capacity that is the subject of the affidavit, not the reason for the plaintiff's appearances at the Union Hall.

In the New York Times case the Court held that the Constitution limits state power in a civil action brought by a public official for criticism of his official conduct to an award of damages for a false statement "made with 'actual malice' — that is with knowledge that it was false or with reckless disregard of whether it was false or not." *Garrison v. State of Louisiana, supra.* Therefore, the central issue in this case is whether the facts bring it within the rule of the New York Times case, which rule was further enunciated in the

Garrison case, and that is, were these statements made with "actual malice — that is with knowledge that it was false or with reckless disregard of whether it was false or not." The record does not show that the statements made by the defendant about the plaintiff were made with knowledge that they were false. Therefore, we are not concerned with that portion of the definition of actual malice that deals with "knowledge that it was false" but there is no proof, but are concerned with whether or not, in view of the facts in the case, the statements made by the defendant were made "with reckless disregard of whether it was false or not." It should be pointed out that the proof of actual malice is on the plaintiff, *New York Times Company v. Sullivan, supra,* that is, the plaintiff must prove that the statements were made with the knowledge that the same were false or with reckless disregard as to whether such statements were false or not.

Neither the Garrison case nor the New York Times case sets forth with any degree of clarity the steps the plaintiff must or must not take in order to determine whether or not statements were made with reckless disregard as to whether such statements were true or false. Mere negligence in determining whether or not a statement is correct is not a showing of actual malice. New York Times Company v. Sullivan, 376 U.S. 254, 288, 84 S.Ct. 710, 730. Nor does speaking out of hatred mean actual malice under the New York Times and Garrison rule. In the Garrison case the Court said:

"Moreover, even where the utterance is false, the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any except the knowing or reckless falsehood. Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth. Under a rule like the Louisiana rule, permitting a finding of malice based on an intent merely to inflict harm, rather than an intent to inflict harm through falsehood, 'it becomes a hazardous matter to speak out against a popular politician, with the result that the dishonest and incompetent will be shielded.' Noel, Defamation of Public Officers and Candidates, 49 Co.L.Rev. 875, 893 (1949). * * *"

A study of the New York Times case and the Garrison case makes it clear that there must be more than an inference drawn before a statement can be said to fall within the rule of those cases. The mere fact that criticism of the manner in which a public official performs his duties would tend to affect his private reputation as well as his public reputation would not render inapplicable the New York Times rule. Garrison v. State of Louisiana, 379 U. S. 64, 77, 85 S.Ct. 209, 217. It would certainly follow that if the statement made by the District Attorney of Orleans Parish and

quoted in the Garrison case to the effect that

> "The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints,"

is not libelous under the New York Times rule (the application of the civil rule of libel as announced by the Supreme Court in that case to criminal libel in Louisiana), then certainly the statements made by the defendant Mr. St. Amant in the present case would not be libelous under that rule.

There is only one statement in the affidavit involved in this case which could possibly have damaged Captain Thompson and that was the statement "we also knew of money that had passed hands between Ed and Herman Thompson, from Ed to Herman." Since the facts show that the plaintiff was well acquainted with Mr. Partin and had been seen by the Union people collecting money at the Union Hall (which could conceivably make a discontent Union member who was opposed to the Union leadership suspicious of the relationship) the use of the quoted statement could not be said to have been used with reckless disregard as to whether false or true.

The statement of the Trial Judge that Mr. St. Amant did not have any interest in Captain Thompson and did not know what the money was for, which the Judge

said is evidence that he made no attempt to investigate whether his statements were true in order to justify his charge that Captain Thompson was being paid off and that he gave no consideration as to what effect the remarks might have on Captain Thompson's reputation and character but was content to let the public draw whatever inference it desired, would not place the case under the New York Times rule of proving he acted with reckless and wanton disregard for whether the statement was false or not. This actually was another way of applying the rule of *Lamartiniere v. Daigrepont*, 168 So.2d 373, quoted by the Trial Judge, in that the Trial Judge was imputing malice to the act on account of its character.

It is clear from the record in this case that the reputation of Captain Thompson, who is highly regarded and a well respected police official, was injured by the statements made, which statements had no relevancy whatsoever to the issue which the plaintiff was attempting to get across to the public, and that Captain Thompson was the victim of intemperate "mud slinging." It is also the opinion of this Court that prior to the decisions of the United States Supreme Court in the New York Times and the Garrison cases the words of the plaintiff would have been libelous under the Louisiana jurisprudence. However, in view of the U. S. Supreme Court's holding that the Constitution delimits a State's power to award damages for libel in actions brought by public officials against critics of their official conduct, as discussed above, this Court has no

alternative but to hold that the judgment of the Trial Court is in error and should be reversed and there should be judgment in favor of the defendant dismissing plaintiff's suit at his cost.

REVERSED.

APPENDIX D

SUPREME COURT OF LOUISIANA
Monday, Feb. 20, 1967

No. 48,184
HERMAN A. THOMPSON
vs.
PHIL A. ST. AMANT

ON WRIT OF REVIEW TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

SUMMERS, Justice.

This action for $150,000 in damages for an alleged libel was instituted by Herman A. Thompson, a deputy sheriff of the parish of East Baton Rouge, against

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McCALEB, J., dissents with written reasons.
HAMLIN, J., dissents, being of the view that the result reached by the Court of Appeal is correct. See also Time vs. Hill, 87 SCt., 534.

Phil A. St. Amant, a retired Army officer and business man of that parish.

The trial court found that the plaintiff, Thompson, had made out his cause of action and, accordingly, condemned the defendant, St. Amant, to pay $5,000 as damages. Upon proper and timely application, a new trial was granted to reconsider the case in the light of New York Times Co. v. Sullivan, 376 U.S. 254 (1964), which had been handed down in the meantime. After reconsideration the trial judge reinstated his original judgment. On appeal the First Circuit reversed, and we granted review on Thompson's application.

The petition alleges that, on June 27, 1962, St. Amant, who was then a candidate for the office of United States Senator, appeared on a television program in Baton Rouge and delivered a political campaign address which was also reduced to writing and distributed to the press and other news media.

In the beginning of his speech St. Amant said:

> "I have a story to reveal tonight which is so unusual that I have bought this time on the television to inform the public. This story involves a well-documented criminal, and ex-convict who became a labor chieftain. It involves misuse and theft of union funds, dealings with Communist officials of Cuba, a criminal conspiracy to destroy evidence and the destruction of that evidence; death resulting

from the commission of a felony and a second death by a hit and run by a union car."

The address thereafter consisted principally of the reading by St. Amant of a transcript of an interview which he had previously had with one J. D. Albin, a member of the local Teamsters' Union. The interview was in question and answer form, with St. Amant asking the questions which Albin answered. At St. Amant's urging, Albin had sworn to the correctness of the facts he recounted, and St. Amant had possession of the affidavit in written form.

By its content the speech was unmistakably designed to disclose Albin's knowledge of illegal, unsavory and criminal actions by E. G. Partin, business agent of the local Teamsters' Union. In the speech St. Amant claimed Senator Russell B. Long, his opponent and the incumbent United States Senator, had recommended Partin to James Hoffa, the union president. By this disclosure he sought to disparage his opponent.

Included among Partin's activities, according to Albin's statements which St. Amant read, was a visit by Partin with Fidel and Raoul Castro in Cuba during November 1960. St. Amant quoted Albin as saying that Partin was responsible for the negotiation of a labor contract in Baton Rouge, giving up many wage benefits and surreptitiously continuing a practice of longer working hours contrary to the interest of union members. Partin was accused of using union funds for his personal benefit, to pay house notes and the rent for his girl friend's car.

Albin related that Partin took "numerous amounts of money out of the cash drawer during the week and at the end of the week he made this up by making a check out to someone else who would endorse it and they would deposit it into the union fund." Albin then relates, in response to St. Amant's questions, that these practices prompted a local union member to write a letter to Arthur Goldberg, then Secretary of Labor, with a copy to James Hoffa, asking for an investigation of Partin's local union by the union hierarchy. According to Albin, when Partin learned of this he became "pretty riled up" and enlisted four members of the union to "help him get rid of the safe" which contained the union records. Albin continued:

> "Now, we knew that this safe was gonna be moved that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson . . . from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police."

In his narrative Albin asserted that the safe disappeared that night, and that Thompson and Lieutenant

Joe Green of the State Police investigated the case but nothing happened. The safe turned up "a few months later, Albin said, when a young man by the name of Forman dove off the river bridge and hit his head on the safe . . . killing himself." This death St. Amant and Albin characterized as "a death resulted (sic) from the commission of a felony." They concluded Forman's death was a "murder" for which, they implied, Partin was responsible.

Then followed statements by Albin, all of which were likewise read by St. Amant, purporting to give information from Partin's "rap sheet", revealing that Partin had been either arrested, charged or convicted for robbery, auto theft, breaking and entering, "second degree burglary", rape, and robbery with firearms. Albin charged that Partin was responsible for the death of a young soldier in Alabama, killed in a hit-and-run automobile accident while Partin was driving the offending vehicle.

St. Amant continued to read the transcript of his interview with Albin, quoting Albin's story of why A. G. Klein, a good friend and a union member, was not "testifying today." He quoted Albin as saying that Klein, who had knowledge of the "safe incident" and other illegal activities of Partin, testified before a Federal Grand Jury in New Orleans, and that shortly thereafter Klein met his death in St. Francisville when a truck "dropped on top of him loaded with about ninety thousand pounds of sand."

St. Amant's presentation of this political address — the manner in which he expressed himself, the tone and theme of the speech, the obvious manifestation of his belief in the veracity of Albin's statements — was calculated to impress upon the reader or listener that he had confidence in Albin's charges against Partin and Thompson and that he believed them to be true. The publication was principally designed to malign the conduct of the incumbent United States Senator; but to do this it was necessary to show Partin's unsavory character and criminal record. Thompson's name was brought into the story only incidentally, yet, he was nonetheless unmistakably accused of criminal conduct.

In his petition Thompson alleged that the publication by St. Amant was false, libelous, scurrilous and malicious and was intended to belittle, degrade and ridicule him. Clearly, he alleged, the publication reflected a design and intent on the part of the defendant, St. Amant, to defame, slander and libel Thompson's good name, reputation and character before his friends, the courts and the public in general. From St. Amant's remarks, the petition alleges, the false and defamatory imputation arises that Thompson was guilty of gross misconduct of a nefarious nature.

In his answer St. Amant admitted making the speech but denied that he defamed or intended to defame Thompson. He alleged that the context in which the remarks concerning Thompson were made shielded those remarks from any defamatory imputation. In the alternative, he alleged that the utterances concerning Thompson were true and their publication was for the

public good. Even if not true, he alleges, there was no malice on his part.

As it is settled in Louisiana that the truth of a defamatory remark is generally a valid defense in a civil suit for defamation, it becomes necessary to decide initially if the remarks concerning Thompson were true. If they are shown to be true that would ordinarily end the case. If the utterances are false, however, we must then proceed to determine if they are defamatory and actionable. La. R.S. 13:3602; Deshotels v. Thistlewaite, 240 La. 12, 121 So. 2d 222 (1960). Both the trial court and the Court of Appeal decided that the statements were not true, and we agree.

By his testimony at the trial, Thompson acknowledged that he first knew Partin in connection with labor disputes — to which Thompson had been assigned for duty. He got to know Partin better, he said, while investigating burglaries at the union hall. In fact, because he had been designated for special duty by the sheriff, he was required to come in contact with almost all of the union business agents in Baton Rouge. He knew them all by their first names and readily conceded that he received funds from Ed Partin when he picked up a check every year for the Baton Rouge Kids' Baseball Clinic. The United Mine Workers, pipefitters', electricians', carpenters', and other unions and several civic and charitable organizations were also solicited by him.

Other duties assigned to him included supervising a bell-ringing campaign for the Salvation Army solicit-

ing for the Volunteers of America, the March of Dimes, the Cystic Fibrosis Fund, the Elks Club and the Lions' Club. He assisted in these civic and charitable undertakings as a public service. And except for such solicitations, he had no connection with Partin other than as a law enforcement officer.

An effort was made to discredit Thompson's testimony that he had only received "checks" from Partin in the solicitations. Partin's former secretary, Marjories Ann Smith, testified that Partin once gave her an envelope for delivery to Thompson. She stated that she and Jeanette Fletcher, another employee in the union office, opened the envelope and saw five twenty-dollar bills. According to Marjorie Ann Smith's testimony, Jeanette Fletcher handed the money to Thompson in a sealed envelope. Thompson, however, categorically denied having received any cash. The trial judge and the Court of Appeal rejected the Smith woman's testimony and accepted Thompson's version that no money passed from Partin to him, other than checks representing donations by the union to charitable and civic organizations. Since Marjorie Ann Smith's testimony was rejected and Jeanette Fletcher did not testify, there is no evidence to support the charge that "money passed" from Partin to Thompson. On this vital issue of fact, which bears so heavily on our decision, we agree with the trial court and the Court of Appeal.

Moreover, as the determination of this issue involves the credibility of the witnesses Thompson and Smith and because there is no other evidence upon which a

contrary result could be reached, the record will not support reversal of the findings of both the trial court and the Court of Appeal. Not only do we find that the remarks about Thompson were false, we find that the record reflects impressively his integrity and good character.

Thompson admitted that checks passed to him from Partin as a solicitation for the Baton Rouge Kids' Baseball Clinic, but the remarks contained in St. Amant's publication say much more. Sheriff Bryan Clemmons, Thompson's employer, found it necessary to defend Thompson against the charges contained in the speech. For many citizens called the sheriff for an explanation because they believed that St. Amant had accused Thompson of taking a pay-off from Partin. A neighbor who heard the broadcast told Thompson that "some man" had called him "some kind of thief and all kinds of names." The meaning the controverted remarks convey to the average reader is utterly defamatory of Thompson.

Preceded and followed as the remarks about Thompson were by the numerous charges of criminal conduct on the part of Ed Partin, linked as those words were with the sequence of events concerning the theft of union funds and the destruction of the safe, it is difficult to ascribe to the words "We also knew of money that had passed hands between Ed and Herman Thompson .... from Ed to Herman" any meaning except that they charged Thompson with taking a criminal pay-off from Ed Partin. Charging that "we knew we couldn't get any help from there", in the context

in which it was used, was a charge that Thompson would aid and abet the wrongdoer rather than perform his duty and enforce the law or otherwise help prevent the commission of a crime. And it is fair to conclude that the defamatory character of these words was in all probability heightened by a dramatic oral presentation.

These are statements of fact. They cannot be said to be expressions of opinion or comments within the rule of "fair" comment. 1 Harper & James, Torts § 5.26 and § 5.28 (1956).

It is one thing to state an innocent fact; it is another to state it in such a manner that it charges criminal conduct to the average listener and to a significant segment of the community. In the latter instance, the party who utters the words bears the burden of establishing either their truth or some justification sanctioned by law; otherwise he must bear the legal consequence of his indiscretion and the injury suffered by the victim of his remarks. In a civil suit those consequences are damages measured in money. Lewis v. Louisiana Weekly Publishing Co., 189 La. 281, 179 So. 315 (1938).

In keeping with this principle, this court in recent years said that:

> "A mere insinuation is as actionable as a positive assertion, if the meaning is plain; and if the words used, when taken in their ordinary acceptation, convey a degrading imputation, no matter how indirectly, they are libelous — it

matters not how artfully their meaning is concealed or disguised." Madison v. Bolton, 234 La. 997, 1010, 102 So. 2d 433, 437-438 (1958).

The guarantees of freedom of speech and of the press embodied in our state and federal constitutions, though designed to assure broad freedom for the expression of opinion, do not permit unrestrained license or confer the right upon an individual to speak or print whatever he chooses without bearing the responsibility for the utterance. Where the published matter is false, malicious and injurious, full responsibility for the damage it may cause is exacted by the law, unless a proper defense or justification is established. Kennedy v. Item Co., 213 La. 347, 34 So. 2d 886 (1948), Fitzpatrick v. Daily States Publishing Co., 48 La. Ann. 1116, 20 So. 173 (1896).

Realizing that these propositions would establish his legal responsibility for false and defamatory utterances, St. Amant asserts that, if we find the remarks to be false, then his defense is that Thompson was a "public official". Thus, he is prohibited from recovering damage for a defamatory falsehood relating to his official conduct, unless he proves the statement was made with "actual malice" — that is, with knowledge that it was false or with reckless disregard of whether it was false or not. He relies upon the ruling in New York Times Co. v. Sullivan, 376 U.S. 254 (1964) to support this contention.

In the New York Times Case, the United States Supreme Court held that, in a civil action brought by a

public official for criticism of his official conduct, the First and Fourteenth Amendments to the Federal Constitution limit state power to an award of damages for a false statement "made with 'actual malice' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not." See Garrison v. Louisiana, 379 U.S. 64 (1964).

Thus the issue is clearly formed. At this phase of our deliberation we must decide whether Thompson, a deputy sheriff, is a "public official" within the meaning of the rule announced in the New York Times Case. We hold that he is.

A deputy sheriff is a state officer whose position is created by the legislature. His appointment is provided for by Title 33, Section 1433, of the Revised Statutes of this State. State v. Mayeux, 228 La. 6, 81 So. 2d 426 (1955); Williams v. Guerre, 182 La. 745, 162 So. 609 (1935). Article 19, Section 1, of the Louisiana Constitution of 1921 requires that all officers of the State shall take the prescribed oath. This constitutional mandate has been implemented by the legislature to require deputy sheriffs to take that oath (La. R.S. 33:1433). The relation between a sheriff and his deputy, then, is an "official" and not a "private" relation. The deputy is a representative of the sheriff in his official capacity; he is a public officer or official whose authority and duty are regulated by law. So far as the public is concerned, the acts of a deputy are the acts of the sheriff himself.

However, because Deputy Sheriff Thompson is technically a "public official" under Louisiana law, it does

not follow that the rule announced in the New York Times Case applies to this case. The real test is whether the official has, or appears to the public to have, "substantial responsibility for or control over the conduct of governmental affairs." Rosenblatt v. Baer, 383 U.S. 75, 85 (1966). See also Bertlesman, *Libel and Public Men*, 52 A.B.A.J. 657 (1966).

The deputy acts for the sheriff, and his acts are the acts of the sheriff. The sheriff's position in government vests him and his deputies with "substantial responsibility for or control of governmental affairs", at least where law enforcement and police functions are concerned. The New York Times rule applies, therefore, to this deputy sheriff. Gilligan v. King, 48 Misc. 2d 212, 264 N.Y.S. 2d 309 (1965); cf. Henry v. Collins, 380 U.S. 356 (1965) and Pope v. Time, Inc., 354 F. 2d 558 (7th Cir. 1965).

It remains, in the light of the conclusions we have already reached, to determine whether the false and defamatory remarks concerning Thompson were uttered by St. Amant with "reckless disregard" of whether they were false or not.

The most important witness to the crucial fact in this regard was Marjorie Ann Smith. It was she who testified that, following Partin's instructions, Jeanette Fletcher gave an envelope containing five, twenty-dollar bills to Thompson. Her testimony is relied upon to establish the truth of the statement that "pay-off" money passed from Partin to Thompson or, at least, to relieve St. Amant of any charge that his utterances

were in "reckless disregard" of whether they were false or not. Yet the first time St. Amant contacted her to verify this occurrence was after the lawsuit was filed and, of course, long after the political address had been televised and otherwise widely disseminated. Jeanette Fletcher, the only other witness to the occurrence, was not called to testify on this vital issue, and her failure to do so was not explained.

Having no personal knowledge of Thompson's activities, St. Amant relied upon Albin's sworn statement to verify the truth of the defamatory matter. Albin, however, did not testify. (St. Amant explained that he was ill and in the hospital.) Nowhere in the record is the reliability or the reputation for truth or veracity of Albin shown.

Although St. Amant testified that he had other affidavits to support some of the facts detailed in his address, none were produced. When asked if he gave any consideration to the effect the speech would have on Thompson, he replied that Thompson "wasn't even on my mind." Partin was his main concern; and in his zeal to show a bad character and background in Partin and to link him to his opponent, he gave no consideration whatsoever to Thompson. He was heedless of the effect his address would have on Thompson or of the truthfulness or not of the statements concerning him.

St. Amant's testimony indicates that he was laboring under the mistaken impression that because the words concerning Thompson were not in themselves defamatory he could not be involved in what might be implied

from those words, such as the charge of criminal conduct which was implicit in them because of the context in which they were used. St. Amant felt he would be shielded from any responsibility because he was quoting Albin. In his own words, "Herman Thompson wasn't even on my mind." It was reckless error for him to take this position. Such a faulty assumption was in utter disregard of whether the remarks about Thompson were true or false.

We think the record contains adequate proof of actual malice on the part of St. Amant — that is, a reckless disregard as to whether the statements concerning Thompson were true or not.

Although "public men are, as it were, public property"[1] we do not feel that the freedom of "uninhibited, robust, and wide-open"[2] debate on public issues guaranteed by the First Amendment to the Federal Constitution can "sensibly be turned into an open season to shoot down the good name of any man who happens to be a public servant."[3]

No proof of damages was necessary, and we do not regard the verdict as excessive.

For the reasons assigned, the judgment of the Court of Appeal is reversed, and the judgment of the trial court is reinstated and made the judgment of this court.

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[1]Beauhornais v. Illinois, 343 U.S. 250, n. 18 (1952).
[2]New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
[3]Tucker v. Kilgore, 388 S.W. 2d 112 (Ky. 1965).

HERMAN A. THOMPSON VS. PHIL A. ST. AMANT — NO. 48,184

McCALEB, J., Dissenting.

I am in disagreement with all factual and legal conclusions of the majority opinion save one — that is, that plaintiff, Thompson, is a public official whose activities come within the rule laid down by the Supreme Court of the United States in New York Times Co. vs. Sullivan, 376 U.S. 254 (1964).

In the first place, it is my view that the evidence in this case clearly discloses that the *facts* related in the sworn affidavit of J. D. Albin (which affidavit was read by St. Amant on television) are substantially true. Thompson admits in his testimony that he was a good friend of the labor leader, Partin (he called him Ed and Partin called him Herman), and was a rather frequent visitor at the Union Hall. He says that he regularly visited the Hall once a week or every ten days to pass the time of day and talk to the two lady secretaries, also to use the phone and "different things like that". He received contributions from Partin for the Baton Rouge Kids' Baseball Clinic but insists that he was given checks, vehemently denying that any payments were made in cash. At first, he denied that these checks were delivered in envelopes but later admitted that, on one or two occasions, the contribution had been placed in an envelope. He said: "Once or twice there has been an envelope but I never opened it.

I would bring it in and give it to Polly".[1] He testified further that he never received anything other than the contributions from Partin and that, when he graduated from the F.B.I. School and had successfully cleared certain burglaries at the Union Hall, Partin sought to reward him by offering him a suit of clothes and a check as a present. However, he says he rejected the offer and reported the matter to the sheriff.

It is thus seen from Thompson's testimony that Albin's statement in his affidavit — that "We also knew of money that had passed hands between Ed and Herman Thompson *** from Ed to Herman" was true unless it be that there is a technically factual difference in payment by check or by cash.[2]

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[1]Polly, to whom he refers, is Mrs. Coxe, the sheriff's secretary, who, Thompson and the sheriff say, kept the record of the collections made by Thompson (he was specially assigned for this extra curricular activity by the sheriff and he solicited, besides the Teamsters, the Electricians, Carpenters, Pipefitters, United Mine Workers and several other labor unions operating within the Baton Rouge area) in the fund-raising drives for various organizations — Baton Rouge Kids' Baseball Clinic, the Baton Rouge Mothers' March, March of Dimes, Elks' Christmas Fund Baskets, the Eagles Christmas Baskets, Lions Club Light Bulb Sale, the Volunteers of America, Cystic Fibrosis and the Shrine Circus. According to Sheriff Clemmons, it came as no surprise to him that some of the members of the Teamsters' Union (evidently meaning Albin and others) might be aware that Partin was giving Thompson money for some purpose and he further testified that Thompson had received cash as well as checks in his solicitation activities from other sources but not from Partin.

[2]Indeed, Thompson indicates that he did not know whether the payments enclosed in envelopes were made by check or cash, for he testified in rebuttal that, when the payment was in an envelope, "***I just brought the envelope in and gave it to Polly and didn't bother to open it."

True, the affidavit states that "money had passed hands" but in usual parlance the term is broad enough to cover payment by check as well as cash. Yet the majority opinion attaches much significance to the evidence on this score. The opinion relies heavily on the statement of Thompson, an interested witness, and rejects as false and unreliable, the testimony of Mrs. Marjorie Ann Smith, one of the secretaries at the Teamsters' Hall, an apparently disinterested witness, who stated unequivocally that Partin had placed five $20.00 bills (which she saw) in an envelope which was delivered by the other secretary, Jeanette Fletcher, to Thompson under Partin's instructions.

For my part, I perceive no valid reason for the rejection of Mrs. Smith's evidence. The deduction that her testimony is unworthy of belief seems to be founded in part on the failure of St. Amant to call Jeanette Fletcher, the other secretary, who Mrs. Smith says also observed the $20.00 bills in the envelope, to corroborate Mrs. Smith's statement. But I know of no law placing such burden on St. Amant. It is not shown that he was acquainted with or had any control over Miss Fletcher who, as the record shows, was acquainted with Thompson and presumably available to him as a witness. Actually, since this phase of the case reduces itself to the affirmative statement of Mrs. Smith that cash was passed and the denial of Thompson that he received cash (the payment being made by check) it is to be wondered why Thompson did not call his friend, Partin, to the stand to verify his statement. Also, he could have called Mrs. Coxe to whom he allegedly delivered

all checks from the Teamsters, but no cash, according to Thompson and the sheriff.

Moreover, I note that the majority opinion states that "The trial judge and the Court of Appeal rejected the Smith woman's testimony and accepted Thompson's version that no money passed from Partin to him, other than checks representing donations by the union to charitable and civic organizations". I have carefully examined the opinions of the trial judge and the Court of Appeal (see 184 So. (2d) 314) and find no ruling by either court rejecting the verity of Mrs. Smith's evidence.[3]

But, be this as it may, it makes no essential difference whether the payment was made in cash or by check. In either case the affidavit that money had passed between Partin and Thompson is an admitted fact. The only suggested difference is that Albin, the author of the affidavit, after relating that Partin withdrew money from the Union funds for his own use and later assertedly arranged for the disappearance of the safe containing the Union records (the accuracy

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[3]The trial judge rested his original opinion on the predicate that the affidavit of Albin was libelous per se. His only reference to Mrs. Smith's testimony is that she stated that money "*** was left in an envelope from Mr. Partin to Mr. Thompson and that he picked up the same." As to this, the judge ruled, in effect, that it was immaterial whether the payments were made in cash or by check since all money paid was received "***purely in connection with drives put on by some charitable institution***", as avouched by the sheriff and Thompson.

The Court of Appeal recited the substance of Mrs. Smith's testimony but made no finding as to her credibility. Indeed, such a finding would have been superfluous, in view of the court's conclusion that Thompson could not recover under the rulings in the New York Times and Garrison cases.

of this part of Albin's affidavit is not challenged), expressed the opinion that, because of Partin's connection with a certain State Trooper, there would be no help obtained from the state police office for an investigation of the irregularities and that probably no assistance would come from the sheriff's office, in view of the close relationship between Partin and the plaintiff, Thompson, If Albin was incorrect in this deduction, this, under the New York Times Co. vs. Sullivan rule, would not have warranted recovery even as to Albin (who, of course, is not a party defendant in this case) because the First Amendment to the Federal Constitution, which delimits by operation of the 14th Amendment the State's right to award damages for civil libels in matters involving public officials, applies only to those matters in which the injured official proves actual malice, i.e., that the publication is made with knowledge that it is false or in reckless disregard of whether it was false or true.

The New York Times rule, as I understand it, authorizes civil libel recovery by public officials for defamatory remarks based on facts known to be false. It does not extend this right of redress to the free expression of opinion, no matter how erroneous, when such conclusion is drawn from true statements of fact. In other words, in view of the fact that the statement that money had passed from Partin to Thompson is true, the circumstance that Albin might have been mistaken, in implying that the money or check was given for Partin's or the Union's protection by the sheriff's office, would not afford a legal ground for holding the publication actionable. For this was fair comment, however erroneous, based on substantially true facts

and to hold otherwise, according to the New York Times case, would unconstitutionally trench upon the right of free speech. As was stated in Beauhornais vs. Illinois, 343 U.S. 250, and many times repeated, "*** public men are, as it were, public property" and, in the absence of *actual* malice, an action for libel may not be maintained. See also Garrison vs. Louisiana, 379 U. S. 64 (1964) and discussion in Time vs. Hill, 87 S. Ct. 534 (1967).

What I have heretofore said would apply only if Albin, the author of the affidavit, was the defendant in this case. But this suit is not against Albin but against St. Amant for publishing the alleged libelous affidavit. Insofar as St. Amant is concerned, the case is exactly parallel with the New York Times decision. Surely St. Amant, having secured an affidavit to the facts set forth therein, can hardly be said to have been actuated by malice toward Thompson. Indeed no proof is shown here that St. Amant knew that any fact stated in the affidavit was false or that any conclusion drawn from a true fact stated in the affidavit was false.

However the majority opinion, in holding St. Amant liable for damages, deduces that the alleged defamatory remarks concerning Thompson were uttered by St. Amant with "*** a reckless disregard as to whether the statements concerning Thompson were true or not". In reaching this conclusion the majority feels that St. Amant could not rely on the verity of the statements of fact contained in the affidavit; that it was incumbent on him to make an investigation of the truth of the statements before publication and that his failure to do so renders him liable as he nec-

essarily utters the defamatory statement with reckless disregard of its truth of falsity. This pronouncement effectually implies malice for it places ignorance of falsity on a parity with knowledge of falsity and in the same category with actual malice by holding that failure to make an independent investigation of truth constitutes a reckless disregard of truth or falsity. But this is exactly contrary to the view of the United States Supreme Court in the New York Times case.

Under the Times doctrine a qualified privilege extends to misstatements of facts in a publication relating to a public officer if other conditions of a qualified privilege (absence of actual malice) exists. There, it was held that a statement attacking the official conduct of a public officer does not forfeit the protection of the constitutional guaranty of free speech by the falsity of some of its factual statements and by the alleged defamation of the public official or by a combination of these two elements and that a defense must be allowed for erroneous statements honestly made. The court found that actual malice had not been shown on the part of the signers or sponsors of a newspaper advertisement describing the maltreatment in Alabama of negro students protesting segregation, where there was no evidence whatever that they were aware of any erroneous statements or were in any way reckless in that regard.[4] With respect to the newspaper, it was held that a statement by its secretary that

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[4]This holding clearly supports the view I have above stated with regard to the author of the affidavit.

he thought the advertisement was substantially correct afforded no constitutional warrant for inferring actual malice from his ignoring the falsity of the advertisement, where his opinion was at least a reasonable one, and actual malice on the part of the newspaper was not shown by its failure to retract, upon plaintiff's demand, even though it later retracted upon the demand of the Governor of Alabama. It was found that there was no duty on the part of the newspaper to check the accuracy of the defamatory statement against the news stories in its own files which would have shown its falsity. This dereliction on the part of the newspaper was regarded as mere negligence and constitutionally insufficient to show the recklessness that is required for a finding of actual malice.

In the case at bar, the majority opinion places a much greater burden on St. Amant — for the Court implies actual malice, contrary to the New York Times case, by concluding that, because he testified that he gave no thought to Thompson, this "*** was reckless error for him to take this position *** a faulty assumption *** in utter disregard of whether the remarks about Thompson were true or false."

In my view, St. Amant was justified in regarding the affidavit of Albin to be accurate. Further inquiry was not essential; the most that can be said is that, perhaps, he was negligent but negligence alone will not support a finding of actual malice.

The judgment or the Court of Appeal should be affirmed.

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Supreme Court of the United States

OCTOBER TERM, 1967

No. 517

PHIL A. ST. AMANT,

Petitioner,

versus

HERMAN A. THOMPSON,

Respondent.

RESPONSE TO APPLICATION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

ROBERT L. KLEINPETER,
Attorney at Law,
P. O. Box 66443,
Baton Rouge, Louisiana 70806

HAUSER PRINTING CO., INC., "Legal Printers", 441 GRAVIER ST., NEW ORLEANS, LA.

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RESPONSE TO APPLICATION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

To the Honorables, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The response of Herman A. Thompson, with respect, shows unto the Honorable Court as follows:

The petition for a writ of certiorari to the Supreme Court of the State of Louisiana filed herein, together with the judgment of the Trial Court, the decision of the Court of Appeal, First Circuit, State of Louisiana, and the decision of the Supreme Court of the State of Louisiana, attached as Appendices A, B, and C, respectfully, accurately reflect the facts of the case, as well as the reasons, with one or two minor exceptions.

On page seven of petitioner's application, counsel states that Thompson admitted to having been a frequent

visitor to the union hall and was "a close friend" of the labor leader Partin. While the record will reflect that Thompson made some trips to the union hall in connection with his duties and was on a friendly basis with Ed Partin, it no where reflects, nor is there anything to indicate, that they were close friends.

The U. S. Supreme Court Rules, Rule 19, provides:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicates the character of reasons which will be considered:
>
> (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.
>
> * * * * *"

A review of the state court decisions, from the trial court through the Supreme Court, clearly reflects that the latest decisions, including *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Garrison v. Louisiana*, 379 U.S. 64 (1964); and, *Rosenblatt v. Baer*, 383 U.S. 75 (1966), were considered and the rules emanating therefrom were applied. While the trial court, the Court of Appeal, First Circuit, and the Louisiana Supreme Court, all concluded that Thompson was a "public official" within the meaning of the Federal Rule, we do not concur in that holding. Be that as it may, the Federal Rule was applied as pronounced in the *New York Times* case and actual malice found to exist under the rule enunciated therein.

We readily concede that this Honorable Court is free to examine the facts, as well as the law, in order to determine whether the correct rules of law have been applied and if so, whether correctly interpreted and applied to the facts. *Hooven and Allison Company v. Evatt*, 324 U.S. 652 (1945). Nevertheless, petitioner in his application for a writ does not complain that the Federal Rule was improperly applied but summarizes his complaint on page ten, as follows:

> "The opinion of the Louisiana Supreme Court did conclude that St. Amant uttered these statements in a reckless disregard as to whether they were true or false (Sup. Ct. Opinion, P. 12). But the Court said this was the mistake for St. Amant. He should have checked more closely the veracity of the statements, and investigated as to the truth of the affidavit and since he didn't do this before he made the statements on the broadcast, he was recklessly disregarding this truth or falsity and thus malice is imputed resulting in liability. This equates ignorance of falsity with knowledge of falsity and imputes malice from both. This is contrary to the *Times* case."

Nothing is further from the truth. Petitioner, Phil A. St. Amant, was engaged in a race for U. S. Senator against the incumbent, U. S. Senator Russell B. Long. Captain Herman Thompson, a Deputy Sheriff for the East Baton Rouge Parish Sheriff's Office, was as far removed from and unconnected with this political race as any other ordinary citizen. In the course of his political campaigning and political speeches, he engaged in mud slinging to the extent that he included any and everyone whose names may have come to him at the moment. When questioned as to whether he gave any thought as to the probable result of connecting innocent persons with such statements,

he promptly replied to the effect that he gave it no thought. It was from such admissions as this that the Trial Court rightfully concluded, and commented on at length in its opinion, that Mr. St. Amant showed a complete lack of regard for the truth or falsity of the statements and consequently found that malice existed. Malice was not imputed, as is argued by counsel for the applicant, and to the contrary, malice was found to exist from the admissions of the petitioner, as well as from the inferences to be gathered from the overall facts. Whether statements were made in ignorance of their falsity or with knowledge of their falsity, is a matter of no moment. In the instant case, petitioner made statements with utter disregard of whether they were true or false.

WHEREFORE, respondent respectfully prays that the petition for a writ of certiorari be denied and further prays for such other relief in the premises as the Court may deem proper and just.

Respectfully submitted,

By: /s/ ROBERT L. KLEINPETER

ROBERT L. KLEINPETER,
P. O. Box 66443,
Baton Rouge, Louisiana 70806

CERTIFICATE

I, the undersigned, of counsel for respondent, hereby certify that I have served a copy of the foregoing response upon Moses C. Scharff, Attorney for petitioner, Whitney Bank Building, New Orleans, Louisiana 70112, by mailing a copy thereof, postage prepaid, to him at said address.

/s/ ROBERT L. KLEINPETER
Attorney for Respondent.

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Supreme Court of the United States

OCTOBER TERM, 1967

No. 517

PHIL A. ST. AMANT,
Defendant-Relator,

versus

HERMAN A. THOMPSON,
Plaintiff-Respondent.

Appeal from the Supreme Court of the State of Louisiana.

ORIGINAL BRIEF ON BEHALF OF DEFENDANT-RELATOR.

MOSES C. SCHARFF,
Whitney Bank Building,
New Orleans, Louisiana.

RUSSELL J. SCHONEKAS,
GIBSON TUCKER, JR.,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

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TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

1.

CITATION TO OFFICIAL REPORT OF OPINION DELIVERED IN THE COURT BELOW.

The opinion rendered by the Court below is reported in 250 La. 405, 196 So.2d 255; and 184 So.2d 314 (La. App. 1st Cir., 1966).

2.

GROUNDS FOR THE COURT'S JURISDICTION.

The decree sought to be reviewed was rendered and entered on February 20, 1967, with a refusal of rehearing on March 27, 1967. By motion granted on June 26, 1967, the time for filing this petition was extended to and including August 19, 1967. The jurisdiction of this Honorable Court is invoked under Article III, Section 2, the First and Fourteenth Amendments of the Constitution of the United States, 28 USCA 1257 (3).

3.

CONSTITUTIONAL PROVISIONS INVOLVED.

a. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." United States Constitution, First Amendment.

b. ". . .No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." United States Constitution, Fourteenth Amendment, Section 1.

4.

QUESTIONS PRESENTED FOR REVIEW.

Were certain statements by Petitioner, Phil A. St. Amant, concerning a public official and communicated over a television program made with *actual malice,* i.e., with knowledge, that they were false or in reckless disregard of whether they were false or true, so as to allow recovery by this public official in a civil action for libel and slander?

MAY IT PLEASE THE COURT:

5.

STATEMENT OF THE CASE.

This matter involves a suit for damages by Captain Herman A. Thompson, a deputy sheriff of the Parish of East Baton Rouge, State of Louisiana, against Phil A. St. Amant, who at the time the alleged incident occurred, was a qualified candidate for United States Senator from the State of Louisiana. During his political campaign, petitioner appeared on a Baton Rouge television station and made remarks about the respondent. Copies of petitioner's statement were also made available to the press which publicized them. Thompson alleged in his original petition that these remarks were false, slanderous, libelous and malicious (Record P. 16) (App. Pp. 4-9); that they were intended to belittle, degrade and ridicule respondent Thompson and defame, slander and libel his good

name, reputation and character before his friends and the general public. (Record P. 17). (App. P. 5). Petitioner St. Amant, in his answer, admitted the statements, but claimed that they were not slanderous and were not made with malice (Record P. 19) (App. Pp. 10-17). In the alternative, St. Amant pleaded the absolute defense of truth of these statements. (Record P. 22) (App. P. 15). Judgment was rendered in the District Court of the State of Louisiana for Thompson in the sum of five thousand and no/100 ($5,000.00) dollars on May 13, 1964.

The Louisiana Court of Appeals, First Circuit, reversed the trial court's decision and held for the petitioner herein, St. Amant, dismissing his suit. Writs of certiorari and review were applied to and granted by the Supreme Court of Louisiana. On February 20, 1967, the Louisiana Court of Appeal was reversed and the judgment of the trial court was reinstated. Rehearing was denied by the Supreme Court of Louisiana on March 27, 1967. Petition for writ of certiorari was granted by this Honorable Court on January 15, 1968 and docketed as No. 517, October Term, 1967.

The sole question presented in this brief is whether the remarks admittedly made by St. Amant were made with actual malice, i.e., they were made with knowledge of falsity or in reckless disregard of whether they were true or false. The constitutional safeguards of freedom of speech were offered as a defense in light of the recent decision, *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d

686 (1964) (Record P. 37) (App. P. 154). The trial court refused a new trial, stating that the respondent Thompson was a public official and the rule of actual malice applied to him (Record P. 38) (App. P. 158). However, in passing on the question, the trial court found actual malice in the statements of petitioner St. Amant and held him liable (Record P. 39) (App. P. 158). The Court of Appeal, First Circuit, reversed the trial court, finding that the respondent, Thompson, was a public official (Record P. 49) (App. P. 184), and the actual malice rule of the *New York Times* case *supra* applies.

The Supreme Court of Louisiana rendered a decision reversing the Louisiana Court of Appeal, First Circuit, and reinstating the trial court on the grounds that the constitutional safeguards of free speech are preserved in a civil action by a public official against his alleged slanderer (Opinion of Supreme Court, P. 9) (App. P. 195). Applying the New York Times rule, the Louisiana Supreme Court found the actual malice necessary to form the basis of such a suit, and concluded that the First and Fourteenth Amendments do not provide protection in this case (Opinion of the Louisiana Supreme Court P. 14) (App. P. 200).

ARGUMENT.

Since at all levels the courts of Louisiana have concluded that Respondent, Thompson, was a public official, the case falls under the aegis of the New York Times rule of libel. The only disputed fact, is that

these statements made by petitioner were uttered with actual malice or with reckless disregard of whether they were true or false. It is respectfully submitted that these statements were not made maliciously, and therefore under the public official rule of the *Times* case, the First and Fourteenth Amendments do guarantee the protection and privilege of free speech.

The question can be resolved only by a close examination of the record. Is there actual malice presented or did the Court wrongfully imply it? The statements referred to were in the form of an affidavit executed by one Albin, a local union member, and read by petitioner St. Amant over television. The pertinent parts of the statement are as follows:

> "Now, we knew that this safe was gonna be moved that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson * * * from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police (Opinion of the Louisiana Supreme Court P. 3)." (App. Pp. 187-188.)

The facts presented therein were substantially true. Thompson admitted he had been a frequent visitor to the Union Hall and was a close friend of the labor leader Partin (T.T. P. 61) (App. Pp. 72-73). He did receive certain monies from Partin for various causes (T.T. P. 63) (App. P. 74), but insisted they were all checks, not cash (T.T. P. 68) (App. P. 79). He even admitted that the payments, for whatever reason given, were tendered in envelopes, and that he never opened them but brought them in and gave them to the Sheriff's secretary. (T.T. P. 71) (App. Pp. 139-140). Thompson even testified that Partin attempted to give him certain rewards for solving cases around the Union Hall (T.T. Pp. 66-67) (App. P. 78), which offer was rejected.

Thus, from the statement that, "We also knew of money that had passed hands between Ed and Herman Thompson . . . from Ed to Herman" (Opinion of Louisiana Supreme Court P. 3) (App. P. 188), we can conclude from the facts in the testimony that this is a true statement. Monies did change hands, and the distinction made by the Louisiana Supreme Court as to whether it was cash or checks (Opinion of Supreme Court P. 6) (App. P. 192) seems to be of no relevance. The affidavit merely said money changed hands, and checks are money. The Louisiana Supreme Court counted heavily on Respondent Thompson's testimony, an interested party, and ignored and discounted the testimony of Mrs. Marjorie Ann Smith, a Teamster's secretary and an

uninterested party, who stated that she had seen cash pass between Partin and Thompson. (Opinion of Sup. Ct. Pp. 6-7) (App. P. 192). There seems to be no reason to disbelieve her testimony. The Supreme Court based this decision on the fact that petitioner St. Amant did not have corroborating testimony from the other secretary who supposedly saw the transfer, one Jeanette Fletcher. (Sup. Ct. Opinion P. 12) (App. P. 198). But there seems to be no legal duty on St. Amant to have an abundance of witnesses testifying to the same thing. The situation reduces itself to Thompson saying he received no cash and Mrs. Smith saying he did. Thompson called no one to support his story. He might have called his friend, Partin, but he did not. And yet the Court used this as a basis for dismissing Mrs. Smith's testimony as being untrue. The Court of Appeal and the trial court did not doubt her veracity.

However, the undisputed fact that some type of money did change hands still remains, and in this sense, Albin's affidavit is correct. And so was petitioner's reading on television. As for what purposes this money changed hands is a matter of individual opinions. Albin expresses the opinion that this money that changed hands was union money and that Partin withdrew it for his own use. He also offered that because of Partin's connection with some State Trooper (he mentioned someone else, not Thompson), there would be no assistance from State

Police in investigating of union officer activities. Albin concluded that since Partin and Thompson were close friends, no help could be expected from the Sheriff's office, but it must be remembered these are deductions and opinions of Albin, not statements of fact. The only actual truthful fact was the money changing hands. The rest were Albin's own personal deductions and conclusions therefrom. If Albin was incorrect in his deductions and opinions, this, under the *New York Times Co. v. Sullivan* rule, would not have warranted recovery even as to Albin, less St. Amant, since the First Amendment's free speech, as applied to the States by the Fourteenth, limits a jurisdiction's power to award damages for civil libels in matters involving public officials. Recovery can only be had where the injured official proves actual malice, i.e., the publication is made with knowledge that it is false or in reckless disregard of whether it was false or true. Libel recovery under the *New York Times* rule is authorized by public officials for defamatory remarks when the remarks are known to be false. But the free expression of opinion by its very nature is believed to be true by the expressor. One can be held libel for wanton disregard for truth, but not for mistaken opinion. The fact that money changed hands being true, the circumstance under which it did change hands, and Albin's implying that the money was for a payoff would not give legal ground for holding the statement actionable. This was opinion and comment, no matter how erroneous,

based on fact, and to hold such comment libelous is to deny, according to the *New York Times* case, the constitutional right of free speech. By holding as they did, the Louisiana Supreme Court did indeed do just that.

The analysis applies to Albin, the author of the statement. But St. Amant was the party sued. However, there is no evidence that St. Amant was actuated by malice toward Thompson. He secured a sworn affidavit from a union member about activities which in the opinion of this member, Albin, were shady, to say the least. No proof was shown that petitioner St. Amant knew that any fact stated in the affidavit was false or that any conclusion drawn from these facts were false.

The opinion of the Louisiana Supreme Court did conclude that St. Amant uttered these statements in a reckless disregard as to whether they were true or false (Sup. Ct. Opinion P. 12) (App P. 198). But the Court said this was the mistake for St. Amant. He should have checked more closely the veracity of the statements, and investigated as to the truth of the affidavit. And since he didn't do this before he made the statements on the broadcast, he was recklessly disregarding this truth or falsity and thus malice is imputed resulting in liability. This equates ignorance of falsity with knowledge of falsity and imputes malice from both. This is contrary to the *Times* case. *Curtis Publishing Co. v. Wallace Butts*, 87 S. Ct. 1975, and *Garrison vs. State of Louisiana*, 379 U.S. 64, 85 S.Ct. 209.

In *New York Times Co. v. Sullivan,* a qualified privilege is lifted and liability attaches. Erroneous statements, honestly made, about a public official, are protected under the First and Fourteenth Amendments from civil liability. And yet in this case, the Louisiana Supreme Court places a greater burden on the petitioner St. Amant, and *implies* actual malice since he did not satisfactorily check the source of the statement. St. Amant testified that he gave no thought to Thompson when he made his statement (T.T. P. 126) (App. P. 51). He read a sworn statement of a third party. The Louisiana Supreme Court interpreted this as being a reckless error needed to impute liability.

It is submitted that at worst for petitioner herein, these were erroneous statements honestly made, and that knowledge of falsity and ignorance of falsity cannot be held to be one and the same.

There is no law or imposed legal duty to check, further than did petitioner, such a statement to avoid malice or recklessness. Failure to check a source may perhaps be considered negligent, but negligence and malice are not synonymous, just as a negligent homicide and murder requiring malice aforethought are not the same.

WHEREFORE, petitioner respectfully prays that the judgment of the Supreme Court of Louisiana be reversed by this Honorable Court and that the judgment of the Court of Appeals, First Circuit of the

State of Louisiana, be reinstated, dismissing the suit of Herman A. Thompson, plaintiff-respondent, at his costs.

Petitioner further prays for such other and further relief in the premises that this Court may deem proper and just.

Respectfully submitted,

MOSES C. SCHARFF,
Whitney Bank Building,
New Orleans, Louisiana 70112.

RUSSELL J. SCHONEKAS,
GIBSON TUCKER, JR.,
Of Counsel.

CERTIFICATE.

I, the undersigned, of counsel for defendant-relator hereby certify that I have served a copy of the foregoing brief upon Robert L. Kleinpeter, Attorney for respondent, at P.O. Box 2828, Baton Rouge, Louisiana, by mailing a copy thereof, postage prepaid to him at said address.

Attorney for Defendant-Relator.

SUPREME COURT, U. S.

FILED

MAR [illegible] 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 517

PHIL A. ST. AMANT,
Defendant-Relator

versus

HERMAN A. THOMPSON,
Plaintiff-Respondent

Appeal from the Supreme Court of the State of Louisiana

ORIGINAL BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT

ROBERT L. KLEINPETER
American Bank Bldg.
P.O. Box 66443
Baton Rouge, Louisiana

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 517.

PHIL A. ST. AMANT,

DEFENDANT-RELATOR,

versus

HERMAN A. THOMPSON,

PLAINTIFF-RESPONDENT.

Appeal from the Supreme Court of the State of Louisiana.

ORIGINAL BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT.

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I.

THE FEDERAL RULE ARGUED AS A DEFENSE WAS NEVER PROPERLY PLEADED, RAISED OR PRESERVED AND IS NOT PROPERLY BEFORE THIS COURT.

Reference to the responsive pleadings filed on behalf of Defendant-Relator (R. 10-16) reflects that the only defense urged was that of truth of the statements made.

Louisiana Code of Civil Procedure Articles 1003 and 1005 requires that all affirmative defenses be specifically pleaded. This same issue was presented in the case of Curtis Publishing Company vs. Butts, 351 F. 2d 702, (5 Cir., 1965). In the Curtis Publishing Co. case the constitutional defense was presented and the plaintiff, Wally Butts, urged that such a defense had not been timely raised or preserved in the lower courts. The Fifth Circuit agreed holding that the defendant had forfeited its constitutional argument by its failure to make a timely assertion of the right. This same requirement has been more recently reiterated in Associated Press vs. Walker, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed. 2d 1094, wherein the Court observed:

> "I have no difficulty in concluding that No. 150, the Associated Press vs. Walker, must be reversed since it is in clear conflict with New York Times. The constitutional defenses were properly raised and preserved by the petitioner. The trial judge expressly ruled that no showing of malice in any sense had been made, and he reserved an award of punitive damages for that reason."

Of further significance, is the fact that the instant case was heard on the merits during the month of May, 1964 (R-2) and New York Times Co. vs. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686, was decided in March, 1964. Additionally, although a motion for a new trial was filed on May 18, 1964, (R-2), the issue was not pleaded nor was any amendment made to the pleadings to properly assert and preserve this affirmative defense.

Accordingly, we do now and have always maintained that the New York Times rule was never properly raised nor preserved as a defense.

II.

PLAINTIFF-RESPONDENT, HERMAN A. THOMPSON, IS NOT A "PUBLIC OFFICIAL" WITHIN THE NEW YORK TIMES RULE NOR IS HE A "PUBLIC MAN IN WHOSE PUBLIC CONDUCT SOCIETY AND THE PRESS HAVE A LEGITIMATE AND SUBSTANTIAL INTEREST."

In New York Times, supra, at footnote 23, this Court observed:

> "We have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included."

In Rosenblatt vs. Baer, 383 U.S. 75, 86 S.Ct. 669 (1966) further elaboration on the New York Times was made:

> "Turning, then, to the question whether respondent was a 'public official' within New York Times, we reject at the outset his suggestion that it should be answered by reference to state-law standards. States have developed definitions of 'public officials' for local administrative purposes, not the purposes of the national constitutional protection."

While it is true, as stated in the brief of Defendant-Relator, that all three courts in the State of Louisiana found the Plaintiff-Respondent to be a "public

official" within the Federal Rule, we nevertheless still maintain that such a conclusion is not only incorrect but likewise violates the fundamental concept of fairness and equal opportunity when the relative positions and status of the individuals concerned in the instant case are considered. Further, the Court in New York Times analogized the privilege for criticism of official conduct to the protection afforded a public official when he is sued for libel by a private citizen. Continuing the discussion of this analogy, the Court observed "The states accord the same immunity to statements of their highest officers, although some differentiate their lesser officials and qualify the privileges they enjoy." This indicates that a differentiation should be made between bona fide public officials and lesser officials for whom and against whom the privilege would not apply. This question was further elaborated on by this Court in Rosenblatt, wherein the Court observed:

> "It is clear, therefore, that the 'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs."

Further comment was made in Rosenblatt:

> "Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in New York Times are present and the New York Times malice standards apply."

Considering this Court's most recent enunciation on this principle in Associated Press vs. Walker, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed 2d 1094 the application of the rule appears to have been further extended, as suggested in New York Times and Rosenblatt, to include "A public man in whose public conduct society and the press had a legitimate and substantial interest."

Not only has the New York Times defense not been timely or properly asserted, the record is absolutely barren of any proof as to the activities, position, and duties of the plaintiff-respondent, Herman A. Thompson. Any and all conclusions drawn as to whether Herman A. Thompson was or was not a "public official" or a "public man" is based entirely upon assumptions since no facts were offered in support of the defense. The most that can be assumed was that Deputy Sheriff Thompson was a salaried employee and would not be "among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of government affairs."

Additionally, consideration should be given to the relative positions of the parties involved in each case. In New York Times, Rosenblatt, and Associated Press vs. Walker, the individuals allegedly defamed were in position to speak back and perhaps be heard. In the instant case, the defendant-relator, Phil A. St. Amant was engaged in a state wide campaign for U.S. Senator and appeared on television to present his case and supposedly expose his opponent, the incumbent U. S. Senator

Russell B. Long. Deputy Sheriff Herman Thompson was completely removed and not even remotely connected with this campaign. He was a salaried employee without the means to purchase state wide television time and not being a candidate himself or being involved in political activities, how much attention would he draw if time was made available to him? There must be an answer and we submit that that answer lies in a limitation upon the applicability of the New York Times rule in such a situation as presented in the instant case.

III.

MALICE WAS ALLEGED AND PROVEN ON THE PART OF PHIL A. ST. AMANT EVEN IN THE ABSENCE OF A PROPER ASSERTION OF THE DEFENSE.

Under Louisiana Jurisprudence, the test of whether a statement is libelous, is the effect the article or statement is fairly calculated to produce, the impression it would naturally engender in the minds of the average persons among whom it is intended to circulate. Madison vs. Bolton, 234 La. 97, 102 So. 2d 433.

The trial judge properly concluded that the inference to be drawn and the actual charge made by Phil A. St. Amant (R-146) was to the effect that there was a "pay off" between Herman A. Thompson and others. In this connection, the Court concluded (R-146 - 147) as follows:

> "The only proof that this Court has is the fact that the money did pass, which was freely admitted by the plaintiff, and that is not sufficient evidence to attach any dishonest motive to Captain Thompson in view of the other testimony by him and as possibly the admissions of the defendant himself that he

intended to attribute no dishonest motive to him, but nevertheless, that mere fact of receiving that money is not proof of dishonesty on his part. It is not proof of his taking a pay off, nor proof that because of his connections with Partin he would not do his duty as a law officer. Proof of those charges, which are implicit in the language of the statement, would be his only defense under our law."

In finding that actual malice existed on the part of defendant-relator, the trial court further observed (R-157):

"Mr. St.Amant stated that he intended no malice toward Captain Thompson, that he was in a political fight with Senator Russell Long and had no interest in Captain Thompson. In reply to a question by plaintiff's counsel as to whether he gave any consideration to what effect the statement and the affidavit of Mr. Albin would have on Captain Thompson, he replied that Captain Thompson was not even in his mind. He further testified that he did not consider that Captain Thompson would be harmed by the statement and that he did not know what the money was for and that for all he knew the same could have been for Thompson's favorite charity. Finally, he admitted that as far as he was concerned he would let the public draw whatever inference it liked with regard to his reference to Captain Thompson.

Therefore, if Mr. St. Amant did not even know Captain Thompson or have any interest in him, and if he did not know what the money was for, which is

> evidence that he made no attempt to investigate whether there was any relationship between Mr. Partin and Captain Thompson, to justify his charge that Captain Thompson was being paid off, and if he never gave any consideration as to what effect those remarks might have on Captain Thompson's reputation and character and was content to let the public draw whatever inference it desired concerning these remarks, then fairness dictates that despire defendant's avowed absence of ill will toward Captain Thompson or intent to do him harm or damage, he acted with reckless and wanton disregard for whether the statement was false or not and in the language of the Sullivan case 'with disregard of whether it (the statement) was false or not.'"

Thus, while counsel for defendant-relator lays great stress on what they term "imputed or implied malice", such is not the case. The trial judge not only had ample opportunity to observe the demeanor of the defendant-relator on the stand, but had plenty of admissions and other remarks from the defendant-relator from which to draw his conclusions. Counsel argues that Mr. St. Amant obtained the affidavit of Mr. J. D. Albin upon which he relied, however, this affidavit was not obtained for Mr. St. Amant's protection but due to requirements of the television station. Mr. St. Amant admitted (R-31):

> "However, because of legal advice to the station and checking with the F.C.C.C. of their legal responsibility, at this time it was determined that the original film would not be used on this program. Instead, I will read to you the signed affidavit of Mr.

J. D. Albin as the testimony exactly as given."

Consequently, the affidavit was obtained and read in lieu of the live testimony by Mr. Albin only at the direction of the television station. Thus, counsel's argument to the effect that Mr. St. Amant had a right to rely on this affidavit certainly does not come forward in good faith.

We submit that a thorough review of the state court decisions, from the trial court through the Supreme Court, reflects that even though the federal rule was not properly asserted nor preserved, that the federal decisions were applied, properly considered and correct conclusions reached. The Supreme Court of Louisiana has constantly followed the federal rules in this respect as is evidenced by the most recent decision of Edwin A. Walker vs. Associated Press, et al (S.Ct. of La., 1968) 206 So. 2d 489 wherein the latest expressions of this Court were considered and the decision of the Appellate Court in favor of General Walker was reversed and plaintiff's suit dismissed.

WHEREFORE, respondent respectfully prays that the judgment of the Supreme Court of Louisiana be affirmed at defendant-relator's cost.

Respondent further prays for such other and further relief in the premises

SUPREME COURT OF THE UNITED STATES

No. 517.—October Term, 1967.

Phil A. St. Amant, Petitioner, v. Herman A. Thompson.	On Writ of Certiorari to the Supreme Court of Louisiana.

[April 29, 1968.]

Mr. Justice White delivered the opinion of the Court.

The question presented by this case is whether the Louisiana Supreme Court, in sustaining a judgment for damages in a public official's defamation action, correctly interpreted and applied the rule of *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), that the plaintiff in such an action must prove that the defamatory publication "was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U. S., at 279–280.

On June 27, 1962, petitioner St. Amant, a candidate for public office, made a televised speech in Baton Rouge, Louisiana. In the course of this speech, St. Amant read a series of questions which he had put to J. D. Albin, a member of a Teamsters Union local, and Albin's answers to those questions. The exchange concerned the allegedly nefarious activities of E. G. Partin, the president of the local, and the alleged relationship between Partin and St. Amant's political opponent. One of Albin's answers concerned his efforts to prevent Partin from secreting union records; in this answer Albin referred to Herman A. Thompson, an East Baton Rouge Parish deputy sheriff and respondent here:

> "Now, we knew that this safe was gonna be moved that night, but imagine our predicament, knowing of Ed's connections with the Sheriff's office through Herman Thompson, who made recent visits to the

> Hall to see Ed. We also knew of money that had passed hands between Ed and Herman Thompson . . . from Ed to Herman. We also knew of his connections with State Trooper Lieutenant Joe Green. We knew we couldn't get any help from there and we didn't know how far that he was involved in the Sheriff's office or the State Police office through that, and it was out of the jurisdiction of the City Police." [1]

Thompson promptly brought suit for defamation, claiming that the publication had "impute[d] . . . gross misconduct" and "infer[red] conduct of the most nefarious nature." The case was tried prior to the decision in *New York Times Co.* v. *Sullivan, supra.* The trial judge ruled in Thompson's favor and awarded $5,000 in damages. Thereafter, in the course of entertaining and denying a motion for a new trial, the Court considered the ruling in *New York Times,* finding that rule no barrier to the judgment already entered. The Louisiana Court of Appeal reversed because the record failed to show that St. Amant had acted with actual malice, as required by *New York Times.* 184 So. 2d 314 (1966). The Supreme Court of Louisiana reversed the intermediate appellate court. 250 La. 405, 196 So. 2d 255 (1967). In its view, there was sufficient evidence that St. Amant recklessly disregarded whether the statements about Thompson were true or false. We granted a writ of certiorari. 389 U. S. 1033 (1968).

For purposes of this case we accept the determinations of the Louisiana courts that the material published by St. Amant charged Thompson with criminal conduct,

[1] St. Amant had preceded this question and answer with other answers by Albin asserting that Partin, on learning that a union member had written to the Secretary of Labor charging that Partin had been stealing union funds, had become "pretty riled up" and had decided to "get rid of the safe" containing the union records.

that the charge was false, and that Thompson was a public official[2] and so had the burden of proving that the false statements about Thompson were made with actual malice as defined in *New York Times* v. *Sullivan* and later cases. We cannot, however, agree with either the Supreme Court of Louisiana or the trial court that Thompson sustained this burden.

Purporting to apply the *New York Times* malice standard, the Louisiana Supreme Court ruled that St. Amant had broadcast false information about Thompson recklessly, though not knowingly. Several reasons were given for this conclusion. St. Amant had no personal knowledge of Thompson's activities; he relied solely on Albin's affidavit although the record was silent as to Albin's reputation for veracity; he failed to verify the information with those in the union office who might have known the facts; he gave no consideration to whether or not the statements defamed Thompson and went ahead heedless of the consequences; and he mistakenly believed he had no responsibility for the broadcast because he was merely quoting Albin's words.

These considerations fall short of proving St. Amant's reckless disregard for the accuracy of his statements about Thompson. "Reckless disregard," it is true, cannot be fully encompassed in one infallible definition. Inevitably its outer limits will be marked out by case-to-case adjudication, as is true with so many legal standards for judging concrete cases, whether the standard is provided by the Constitution, statutes, or case law. Our cases, however, have furnished meaningful guidance for

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[2] The Louisiana Supreme Court concluded, after considering state law, that a deputy sheriff has "substantial responsibility for or control over the conduct of governmental affairs," the test established by *Rosenblatt* v. *Baer*, 383 U. S. 75, 85 (1966), "at least where law enforcement and police functions are concerned." 250 La., at 422, 196 So. 2d, at 261.

the further definition of a reckless publication. In *New York Times, supra*, the plaintiff did not satisfy his burden because the record failed to show that the publisher was aware of the likelihood that he was circulating false information. In *Garrison* v. *Louisiana*, 379 U. S. 64 (1964), also decided before the decision of the Louisiana Supreme Court in this case, the opinion emphasized the necessity for a showing that a false publication was made with a "high degree of awareness of . . . probable falsity." 379 U. S., at 74. MR. JUSTICE HARLAN's opinion in *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 153 (1967), stated that evidence of either deliberate falsification or reckless publication "despite the publisher's awareness of probable falsity" was essential to recovery by public officials in defamation actions. These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

It may be said that such a test puts a premium on ignorance, encourages the irresponsible publisher not to inquire, and permits the issue to be determined by the defendant's testimony that he published the statement in good faith and unaware of its probable falsity. Concededly the reckless disregard standard may permit recovery in fewer situations than would a rule that publishers must satisfy the standard of the reasonable man or the prudent publisher. But *New York Times* and succeeding cases have emphasized that the stake of the people in public business and the conduct of public officials is so great that neither the defense of truth nor the standard of ordinary care would protect against self-

censorship and thus adequately implement First Amendment policies. Neither lies nor false communications serve the ends of the First Amendment, and no one suggests their desirability or further proliferation. But to insure the ascertainment and publication of the truth about public affairs, it is essential that the First Amendment protect some erroneous publications as well as true ones. We adhere to this view and to the line which our cases have drawn between false communications which are protected and those which are not.

The defendant in a defamation action brought by a public official cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified annonymous telephone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.[3]

By no proper test of reckless disregard was St. Amant's broadcast a reckless publication about a public officer. Nothing referred to by the Louisiana courts indicates an awareness by St. Amant of the probable falsity of Albin's statement about Thompson. Failure to investigate does not in itself establish bad faith. *New York Times Co.* v. *Sullivan, supra,* at 287–288. St. Amant's mistake about his probable legal liability does not evidence a doubtful

[3] See, *e. g., Curtis Publishing Co.* v. *Butts,* 388 U. S. 130, 169–170 (WARREN, C. J., concurring in the result), and 172 (BRENNAN, J., dissenting) (1967).

mind on his part. That he failed to realize the import of what he broadcast—and was thus "heedless" of the consequences for Thompson—is similarly colorless. Closer to the mark are considerations of Albin's reliability. However, the most the state court could say was that there was no evidence in the record of Albin's reputation for veracity, and this fact merely underlines the failure of Thompson's evidence to demonstrate a low community assessment of Albin's trustworthiness or unsatisfactory experience with him by St. Amant.

Other facts in this record support our view. St. Amant made his broadcast in June of 1962. He had known Albin since October 1961, when he first met with members of the dissident Teamsters faction. St. Amant testified that he had verified other aspects of Albin's information and that he had affidavits from others. Moreover Albin swore to his answers, first in writing and later in the presence of newsmen. According to Albin, he was prepared to substantiate his charges. St. Amant knew that Albin was engaged in an internal struggle in the union; Albin seemed to St. Amant to be placing himself in personal danger by publicly airing the details of the dispute.

Because the state court misunderstood and misapplied the actual malice standard which must be observed in a public official's defamation action, the judgment is reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS concur in the judgment of the Court for the reasons set out in their concurring opinions in *New York Times Co.* v. *Sullivan,* 376 U. S. 254, 293 (1964), and *Garrison* v. *Louisiana,* 379 U. S. 64, 79, 80 (1964).

SUPREME COURT OF THE UNITED STATES

No. 517.—October Term, 1967.

Phil A. St. Amant, Petitioner, v. Herman A. Thompson. | On Writ of Certiorari to the Supreme Court of Louisiana.

[April 29, 1968.]

Mr. Justice Fortas, dissenting.

I do not believe that petitioner satisfied the minimal standards of care specified by *New York Times* v. *Sullivan*, 376 U. S. 254 (1964). The affidavit that petitioner broadcast contained a seriously libelous statement directed against respondent. Respondent was a public official. He was not petitioner's adversary in the political contest. His casual, careless, callous use of the libel cannot be rationalized as resulting from the heat of a campaign. Under *New York Times*, this libel was broadcast by petitioner with "actual malice"—with reckless disregard of whether it was false or not. The principle of *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130 (1967), in my opinion, should lead us to affirmance here.

The First Amendment is not so fragile that it requires us to immunize this kind of reckless, destructive invasion of the life, even of public officials, heedless of their interests and sensitivities. The First Amendment is not a shelter for the character assassinator, whether his action is heedless and reckless or deliberate. The First Amendment does not require that we license shotgun attacks on public officials in virtually unlimited open-season. The occupation of public officeholder does not forfeit one's membership in the human race. The public official should be subject to severe scrutiny and to free and open criticism. But if he is needlessly, heedlessly, falsely

that this Court may deem proper and just.

Respectfully Submitted:

ROBERT L. KLEINPETER
American Bank Building
P. O. Box 66443
Baton Rouge, Louisiana
70806

C E R T I F I C A T E

I, the undersigned, of counsel for plaintiff-respondent hereby certify that I have served a copy of the foregoing brief upon Moses C. Scharff, Attorney for Relator, Whitney Bank Building, New Orleans, Louisiana 70112, by mailing a copy of the same, postage pre-paid, to him at said address.

Robert L. Kleinpeter
Attorney for
Plaintiff-Respondent

accused of crime, he should have a remedy in law. *New York Times* does not preclude this minimal standard of civilized living.

Petitioner had a duty here to check the reliability of the libelous statement about respondent. If he had made a good-faith check, I would agree that he should be protected even if the statement were false, because the interest of public officials in their reputation must endure this degree of assault. But since he made no check, I agree with the Supreme Court of Louisiana that *New York Times* does not prohibit recovery.

I would affirm.